This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

HARVARD LAW LIBRARY

Digitized by Google

Digitized by Google

Digitized by Google

5A

Jan 11

ESTABLISHED 1874

c+

The Washington Law Reporter

RICHARD A. FORD, EDITOR

Official Newspaper of Supreme Court of the District of Columbia,
Publishing also all Decisions of the Court of Appeals
of the District of Columbia

VOLUME XXXIII

1905

WASHINGTON, D. C.
THE LAW REPORTER PRINTING COMPANY, PUBLISHERS
1905

KFD
1247
.W37X
V. 33
1905

Digitized by Google

P
N23
F

Rec. Feb. 8, 1906

Digitized by Google

TABLE OF CASES.

WASHINGTON LAW REPORTER, VOLUME XXXIII. 1905.

Court of Appeals of the District of Columbia.

Page

Abner-Drury Brewing Company, Leonard v. ... 211
Allen v. United States, ex rel. Lowry ... 354
American Security and Trust Company, Bunten v. ... 247
Automatic Scale Company, Computing Scale Company v. ... 789
Barnes v. District of Columbia ... 53
Berlin, Ohio National Bank v. ... 726
Bernard, Supreme Commandery United Order Golden Cross v. ... 722
Bernsdorff v. Bernsdorff ... 775
Bieber v. Gans ... 51
Board of Medical Supervisors, Czarra v. ... 470
Boogher v. Roach ... 326
Bowyer, United States, ex rel. Rodriguez v. 164
Bradford v. National Benefit Association ... 786
Brandenburg v. District of Columbia ... 740
Brandenburg, Ubhoff v. ... 473
Brown, Montgomery v. ... 468
Brown v. Petersen ... 310
Browning, Neely Electric Construction and Supply Company v. ... 152
Bryan v. Curtis ... 520
Buckey, Dowling v. ... 774
Bundy v. United States, ex rel. Darling ... 434
Bunten v. American Security and Trust Company ... 247
Burns, Hayes v. ... 200
Butler v. Frazee ... 387
Byram v. United States ... 458
Byrne v. Morrison ... 215
Cahill v. District of Columbia ... 759
Capital Traction Company, Rockwell v. ... 338
Chapman, District of Columbia v. ... 232
Cherry v. Whalen ... 485
Clark, Dancy v. ... 18
Clark v. Gerstley ... 758
Classen, Crandell v. ... 130
Columbia Railway Company, Hawley v. ... 150
Columbian Correspondence College v. Wynne ... 230
Columbian University v. Taylor ... 181
Computing Scale Company of America v. Automatic Scale Company ... 789
Consaul, Roberts v. ... 98
Coughlin v. District of Columbia ... 376
Crandell v. Classen ... 130
Critchfield v. Easterday ... 504
Cruit v. Owen ... 323
Curtis, Bryan v. ... 520
Czarra v. Board of Medical Supervisors ... 470
Daggett, Richardson v. ... 24
Dancy v. Clark ... 18
Darlington v. Turner ... 114
Davis v. Sanders ... 101
District of Columbia, Barnes v. ... 53
District of Columbia, Brandenburg v. ... 740
District of Columbia, Cahill v. ... 759
District of Columbia v. Chapman ... 232
District of Columbia, Coughlin v. ... 376
District of Columbia, Dotey v. ... 293
District of Columbia, Duehay v. ... 422
District of Columbia, Fields v. ... 501
District of Columbia v. Garrison ... 345
District of Columbia, Gassenheimer v. ... 197
District of Columbia, Guy v. ... 165
District of Columbia, Klopfer v. ... 153
District of Columbia v. Lewis ... 691
District of Columbia, Lockwood v. ... 131
District of Columbia, Martin v. ... 742
District of Columbia, Myers v. ... 291
District of Columbia, Palmer v. ... 402
District of Columbia, Probey v. ... 482
District of Columbia, Smith v. ... 418
District of Columbia, Taylor v. ... 67
District of Columbia, Ward v. ... 71
District of Columbia, Wilson v. ... 502
Dobbins v. Thomas ... 743
Dotey v. District of Columbia ... 293
Dowling v. Buckey ... 774
Downey, Washington Times Company v. ... 770
Drew v. Hogan ... 488
Duehay v. District of Columbia ... 422
Earle v. Waggaman ... 420
Easterday, Critchfield v. ... 504
Emmons, Jackson v. ... 165
Ferryboat Columbia, James Clark Company v. ... 519
Fields v. District of Columbia ... 501
Francis, Norwood v. ... 455
Frazee, Butler v. ... 387
Gaddis, Whipple v. ... 309
Gans, Bieber v. ... 51
Garrison, District of Columbia v. ... 345
Gassenheimer v. District of Columbia ... 197
Georgetown and Tenallytown Railway Company v. Smith ... 261
Gerstley, Clark v. ... 758
Gerstley, McGuire v. ... 754
Green, McIntosh v. ... 423
Green v. United States ... 535
Guthrie v. Welch ... 162
Guy v. District of Columbia ... 165
Hawley v. Columbia Railway Company ... 150
Hayes v. Burns ... 200
Hazleton v. Miller ... 217
Held v. Walker ... 440
Hitchcock, Naganab v. ... 248
Hogan, Drew v. ... 488
Holden v. United States ... 34
Howell v. Schneider ... 82
Hubbard v. Perlie ... 482
Iglehart v. Iglehart ... 711
Jackson v. Emmons ... 165
James Clark Company v. Ferryboat Columbia ... 519
Johnson, Staples v. ... 183
Johnson v. United States ... 679
Johnson, United States v. ... 776
Jones v. Rutherford ... 498
Jordan, Landram v. ... 243
Justh, Swart v. ... 149
Kann v. King ... 147
Karrick v. Wetmore ... 435
Kellogg v. Mutual Life Insurance Company 103
King, Kann v. ... 147
King, Webb v. ... 147
Klopfer v. District of Columbia ... 153
Landram v. Jordan ... 243

Digitized by Google

Page
Lane v. Lane ... 775
Leonard v. Abner-Drury Brewing Company 211
Lewis, District of Columbia v. ... 691
Lockwood v. District of Columbia ... 131
Looney v. Metropolitan Railroad Company 39
Macfarland v. Saunders ... 393
McCaully v. United States ... 306
McCurdy, Marfield v. ... 450
McDermott v. Severe ... 226
McGuire v. Gerstley ... 754
McIntosh v. Green ... 423
Marfield v. McCurdy ... 450
Martin v. District of Columbia ... 742
Martin, Rheam v. ... 807
Metropolitan Railroad Company, Looney v. 39
Michalowicz v. Michalowicz ... 442
Millard v. Roberts ... 198
Miller, Hazleton v. ... 217
Miller, Potomac Laundry Company v. ... 773
Montgomery v. Brown ... 468
Morgan v. Morgan ... 409
Morimura v. Samaha ... 258
Morrison, Byrne v. ... 215
Mutual Life Insurance Company, Kellogg v. 103
Myers v. District of Columbia ... 291
Naganab v. Hitchcock ... 248
National Benefit Association, Bradford v. ... 786
Neely Electric Construction and Supply Company v. Browning ... 152
Norwood v. Francis ... 455
Ocean Accident and Guarantee Corporation, Patterson v. ... 274
Ohio National Bank of Washington v. Berlin 726
Owen, Cruit v. ... 323
Palmer v. District of Columbia ... 402
Patterson v. Ocean Accident and Guarantee Corporation ... 274
Payne v. Robinson ... 825
People's National Bank v. Saville ... 178
Perkins v. Tyrer ... 54
Perlie, Hubbard v. ... 482
Petersen, Brown v. ... 310
Postal Telegraph and Cable Co., White v. ... 295
Potomac Laundry Company v. Miller ... 773
Probey v. District of Columbia ... 482
Raymond v. United States ... 514
Reinhardt, Travers v. ... 406
Rheam v. Martin ... 807
Richardson v. Daggett ... 24
Roach, Boogher v. ... 326
Roberts v. Consaul ... 98
Roberts, Millard v. ... 198
Robinson, Payne v. ... 825
Rockwell v. Capital Traction Company ... 338
Ross, Whelpley v. ... 371
Rudderforth, Slater v. ... 424
Rutherford, Jones v. ... 498
Ryan v. United States ... 516
Samaha, Morimura v. ... 258
Sanders, Davis v. ... 101
Saunders, Macfarland v. ... 393
Saville, People's National Bank v. ... 178
Schneider, Howell v. ... 82
Severe, McDermott v. ... 226
Shaffer v. United States ... 4
Shaw, Wilson v. ... 328
Slater v. Rudderforth ... 424
Smith v. District of Columbia ... 418
Smith, Georgetown and Tenallytown Railway Company v. ... 261
Sparks v. Sparks ... 344

Page
Staples v. Johnson ... 183
Supreme Commandery United Order Golden Cross v. Bernard ... 722
Susquehanna Coal Company, Washington Loan and Trust Company v. ... 738
Swart v. Justh ... 149
Taylor, Columbian University v. ... 181
Taylor v. District of Columbia ... 67
Thomas, Dobbins v. ... 743
Travers v. Reinhardt ... 406
Turner, Darlington v. ... 114
Tyrer, Perkins v. ... 54
Ubhoff v. Brandenburg ... 473
United States, Byram v. ... 458
United States, Green v. ... 535
United States, Holden v. ... 34
United States, Johnson v. ... 679
United States v. Johnson ... 776
United States, McCaully v. ... 306
United States, Raymond v. ... 514
United States, Ryan v. ... 516
United States, Shaffer v. ... 4
United States, ex rel. Darling, Bundy v. ... 434
United States, ex rel. Lowry, Allen v. ... 354
United States, ex rel. Rodriguez v. Bowyer. 164
Vogt v. Vogt ... 390
Waggaman v. Earle ... 420
Walker, Held v. ... 440
Ward v. District of Columbia ... 71
Washington Loan and Trust Company v. Susquehanna Coal Company ... 738
Washington Times Company v. Downey ... 770
Webb v. King ... 147
Welch, Guthrie v. ... 162
Wetmore, Karrick v. ... 435
Whalen, Cherry v. ... 485
Whelpley v. Ross ... 371
Whipple v. Gaddis ... 309
White v. Postal Telegraph and Cable Company ... 295
Williams v. Williams ... 132
Wilson v. District of Columbia ... 502
Wilson v. Shaw ... 328
Wynne, Columbian Correspondence College v. ... 230

Supreme Court, District of Columbia.

Darneille v. Tuck ... 821
Hill v. Moore ... 549
Holtzman v. Capital Construction Company ... 531
In re Estate of Harris ... 290
Memorial Evangelical Lutheran Church v. Northwestern National Insurance Company ... 692
Mertens v. Proctor ... 565

Supreme Court of the United States.

Hunt v. Springfield Fire and Marine Insurance Company ... 154
Keely v. Moore ... 134
McCaffrey v. Manogue ... 167
Wolff v. District of Columbia ... 137

Other Decisions.

Cranch v. Railroad Company (N. Y.) ... 630
Littig v. Vestry (C. A. Md.) ... 567
Parks v. Northwestern University (Illinois) ... 579
Walker v. Best (S. C. N. Y.) ... 610
Wright v. Hart (C. A. N. Y.) ... 658
Dissenting opinion ... 674

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION. ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 1

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.

Office of Publication: 518-520 FIFTH STREET, N.W.

Telephone Main 828,

WASHINGTON, D. C. - - - JANUARY 6, 1905

CONTENTS.

Editorial 1

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA: Augustus L. Shaffer, appellant, v. The United States of America 4

Legal Notices 12

BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth street northwest, on Monday, January 9, 1905, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 m. to 1 p. m. H. RANDALL WEBB, *Secretary.*

DECISIONS BY THE COURT OF APPEALS.

Incorporations; Subch. 4, Chap. 18, Code D. C., Construed.

An important decision construing certain provisions of subchapter 4 of chapter 18 of the District Code, embodying the general incorporation law of this District, was rendered January 4, 1905, in the case of John C. Dancy, Recorder of Deeds, v. Horace F. Clark. The appeal was from an order of the court below directing the issue of a writ of mandamus to compel the recorder to receive for record a certificate of incorporation presented by the relators and which had been rejected by that officer on the ground that it contemplated that the proposed corporation should engage in five several classes of business, instead of one separate and independent enterprise, to which it was claimed by the recorder—whose view in that regard was sustained by the Attorney-General of the United States—the provisions of the Code governing incorporations restricted them. The decision of the court below, which is reversed by the Court of Appeals, held that the recorder was merely a ministerial officer, without authority to pass upon the question, and having no discretion but to receive and record the certificate when offered, leaving the question of its validity to be passed upon by the courts in a proper proceeding. The Court of Appeals, while holding the recorder to be a ministerial officer, yet says he is charged with some discretion in the premises, though not a judicial discretion; and that where he has exceeded the limits of that discretion and denied a right to which parties are by law entitled, his action will be controlled by the courts. The question presented, therefore, was whether the certificate presented was entitled to record, and this the court denies for several reasons. In the first place the court holds that corporations formed under subchapter 4 are, by the provisions thereof, restricted to a single object, while in the certificate offered for record five distinct classes of business are stated; and that the defect in the certificate in this regard was not helped by the provision of section 633 of the Code, allowing corporations to extend their business to "any other business authorized hereby," etc. In the next place, the certificate attempted to give the corporation power to operate railways, and this the court holds could not be done in the face of an express prohibition in the law itself. The certificate named five trustees, while but three of the number signed and acknowledged it, and this the court holds a defect—the language of the court in that connection being of especial significance. The opinion of the court is by Mr. Justice Morris, will be reported in our next issue, and should be carefully studied by those proposing to form corporations under the law of this District.

Negligence; Fellow Servants.

In the case of Looney, admx., v. Metropolitan Railroad Company et al., the appeal was from a judgment for the defendant in an action by the administratrix of the estate of a decedent to recover damages for his death caused by the negligence of the defendants. The deceased was an employee of the defendant company, and was killed by an electric shock received while at work in a "pit" where the current is changed from underground to overhead. It is held, affirming the judgment of the trial court, that if the injury was not entirely accidental, the negligence, if any, was that of a fellow servant of the decedent, and that the defendants were not liable. The opinion is by Mr. Justice Morris.

The nomination of Hon. Seth Shepard to be chief justice of the Court of Appeals of this District, in succession to Chief Justice Alvey, resigned, and of Hon. Charles H. Duell to be associate justice of that court, to fill the vacancy caused by the promotion of Mr. Justice Shephard, were confirmed by the Senate on Thursday, January 5, 1905.

Digitized by Google

RETIREMENT OF CHIEF JUSTICE ALVEY.

The chamber of the Court of Appeals of this District was the scene of a gathering held on Friday afternoon, December 30, 1904, the occasion being the final session over which Mr. Chief Justice Alvey should preside. The session was held by special request of the members of the bar, and was made memorable by the presentation to the retiring chief justice of a magnificent silver service. A distinguished company was present, including the judges of the Court of Appeals and of the Supreme Court of the District, members of the bar, and others prominent in public life.

Immediately after the court had convened, Mr. William F. Mattingly, representing the bar, made the address of presentation, and in closing read a letter from Chief Justice McSherry, of the Court of Appeals of Maryland, expressing his regret that recent illness, and the fear that leaving his home might renew it, compelled him to be absent. In the course of his letter Judge McSherry referred to Chief Justice Alvey as a man whose attainments had placed him in the foremost rank of the jurists of the English-speaking peoples.

In making the presentation Mr. Mattingly spoke as follows:

To me, Mr. Chief Justice, has been assigned the pleasant duty of voicing the feelings of the bar on your retirement from the bench. This duty is all the more pleasant because I have the consolation of feeling and knowing that nothing that I can say can transcend the limits of sincerity or to one not a stranger to you be beyond the truth. During more than a decade of service upon this bench nothing has occurred to mar the feeling of harmony between the bench and bar. During this period growing intercourse has but tended to increase the appreciation of the fact that the court had for its chief one who possessed those qualifications of mind and heart which go to the make-up of a great judge. You came as the first chief justice of this court, upon its organization in 1893, not entirely a stranger to us, because we had become somewhat familiar with your qualifications as a judge through the decisions of the Court of Appeals of our mother State, over which you had presided so long and so ably. But when you came into our midst, knowledge of the fact was brought home to us that this court had for its chief one who from long experience and long study recognized that law is a science; one who had acquired knowledge from the sources of the law; who recognized, in the language of Lord Coke, that "ratio est anima legis," and again in the language of Coke, "One in the sunshine must descend deep in the well of learning to view the bright stars of knowledge overhead;" one who had for his object the ascertainment of truth, and who brought to the attainment of that object more than usual ability, with no horror for work; one in whose hands the sword of justice became a staff upon which the innocent, and those in whom the right was, might lean for support and feel its safety.

Aside from our profound respect for the knowledge, learning, and ability of the judge, we realized that the man was kindly, humane, genial, sympathetic; not only big-brained, but big hearted; strong in the knowledge of the right, the true, the beautiful, and the good. The judge won our respect; the man our regard and esteem.

As the shadows of our lives lengthen towards the East, I feel that we become more keenly appreciative of the good wishes, kindly regard, esteem, friendship, and affection of those among whom our life is cast, than do those who are rejoicing in the vigor, confidence, and strength of self-reliant youth. It is this appreciative feeling that I have been deputed to express to you, and to assure you of its truth and depth, and I feel and know its helpfulness.

While regretting the pang of parting, we rejoice in the knowledge of the fact that you are quitting the labor of life in the full possession of those faculties of mind and heart which have rendered your life a useful one; and we trust that you may be able to spend the balance of its span in the enjoyment of books, of family, of friends, and home.

While regretting your departure from our midst, we feel that we have cause for congratulation upon the fact—and ought to make public acknowledgment of it—that the President, in the broad-mindedness of his make-up, and in his desire to give a "square deal," has disregarded what might be deemed the demands of petty politics, and has promoted to your place one of your learned associates since the organization of the court, who, we feel, will profit by the example you have set.

The bar, desiring to present you some permanent token and reminder of its respect and esteem, now offers you this service of silver—so suggestive of domesticity—the true happiness of life, of friends, of hospitality, of family, of home—in the confident hope that you may live long in the enjoyment of its use, and to you and to yours, and to those of your blood who may come after you, it may prove to be a token, a remembrance, a reminder of the respect, regard, esteem, affection, and love which the bar of the District of Columbia entertains for you. May you realize—

> "Age is opportunity no less
> Than youth itself, though in another dress.
> And as the evening twilight fades away
> The sky is filled with stars, invisible by day."

Chief Justice Alvey, responding to the address of presentation, said:

Gentlemen of the Bar: This is to me a most solemn occasion. That I retire from a life-work and from the associations of that work, that have continued for a period of nearly thirty-eight years, could not be otherwise than solemn and affecting to me. I have no words to adequately express my feelings, excited by what has been so kindly said by the representative of the bar upon this occasion.

As is well known, I have been for nearly thirty-eight years on the bench—a greater part

Digitized by Google

of that time on the bench of the Court of Appeals of Maryland, and for the last eleven and a half years on the bench of the Court of Appeals of this District. And during that long period of service it has been a source of intense gratification to me that the relations between the bar and myself, as well as that with my brother judges, has been none other than that of entire kindness and courtesy.

The time has come, however, when those kindly official relations, which have so long subsisted, must terminate. Time and the infirmities of age render it necessary that I should retire to the shades of life and give place to one of more youthful vigor and energy for the discharge of the duties of the position that I have heretofore held in this court.

We have been associated together since the organization of this court, in the work of administering justice; your function being that of enlightening the court, and the function of the court that to decide the issue of the matter discussed before it. It has been the good fortune of this court during the period of its existence to have a learned and able bar, and that has been no small element in whatever success may have been attained by the court. A good and learned bar is essential to the success of any court, however high and controlling its jurisdiction.

It is a sad reflection to me that this is the last time that I am to occupy this seat and to meet you all face to face, and never more to hear you discuss your contentions at the bar. But the inexorable effects of time and the infirmities of age prescribe laws to which we must all submit, however reluctantly. And it is to that law I now submit in retiring from this bench.

The beautiful testimonial that the bar has so kindly tendered me I receive as a token of their kindness and esteem, and I shall ever regard it as a lasting memorial of the pleasant relations that have existed between us. I beg that the members of the bar will accept my very sincere thanks for this generous mark of their approbation. That I accept it with high appreciation it is unnecessary for me to declare, but as a memorial of this present occasion, with the very kind feelings expressed for myself upon its presentation, I shall always regard it as of inestimable value.

In conclusion, gentlemen, I must beg that you will, one and all, accept my most sincere thanks for your great manifestation of kindness and regard, and that you all, individually, be assured of my highest regard and esteem, and that you have my best wishes for a long and happy life. And having said this much as chief justice of this court, I must now bid you all a final adieu, for the seat that I now occupy, after this day's brief session, will never more be occupied by me as the chief justice of this court.

The silver service consists of five pieces and a mahogany inlaid tray. The coffee pot bears the following inscription: "To the Honorable Richard H. Alvey, First Chief Justice of the Court of Appeals of the District of Columbia, upon his retirement from the bench, December 31, 1904, from the Members of the Bar."

The committee in charge of the ovation was composed of J. Holdsworth Gordon, chairman; A. S. Worthington, J. J. Darlington, William F. Mattingly, A. A. Hoehling, jr., Benjamin Minor, George E. Hamilton, M. J. Colbert, and Melville Church. The chief justice came to Washington from his home at Hagerstown, Md., at the request of the committee, to be present at the session of the court.

Opinion Evidence.

In Aldrich v. Bay State Construction Co., decided by the Supreme Judicial Court of Massachusetts in October, 1904, 72 N. E. 53, it was held that on an issue as to the value of corporate stock of which there had been no sales, the opinion of the treasurer as to what would be the fair market value was admissible. The court said in part:

"The same person who was the president of the defendant construction company held also the office of treasurer in each of the street railway companies. There had been no sales of stock of the Turners Falls Company. Under these circumstances, the court admitted his answer to the question what, in his opinion, would be the fair market value of the stock—that he should call it $100 per share. The bill of exceptions does not show that this question or answer were excepted to, although it shows an exception to evidence of value on a certain date. We think the evidence was properly admitted, in the absence of any possible evidence of ordinary market value."

Carriers—Injury to Passengers—Evidence.

In Rodman v. North Jersey St. Ry., decided by the Supreme Court of New Jersey in November, 1904 (58 Atl. 1095), it was held that where the proofs are that a trolley car was driven past a barrel wagon moving in the opposite direction; that the wagon had projecting sides; that the condition of the roadway was such that a lurch of the wagon might reasonably be anticipated, and that the space between the two vehicles at the time and place of passing was not sufficient to prevent the car from being struck, it was not error to refuse to non-suit the plaintiff, or to deny a motion to direct a verdict for the defendant company.

Vendor's Lien—Limitations.

The Supreme Court of Indiana held, in the case of Cassell v. Lowry, that when a debt for the unpaid purchase price of land has been barred by the statute of limitations, a vendor's lien in his favor for such purchase money is also barred; but that a purchaser of land who admits the existence of a vendor's lien for unpaid purchase money which has become non-enforceable by the running of the statute, can not quiet his title as against such lien, for equity will not relieve a man from his honest debts, although lapse of time may have destroyed his creditor's right to sue thereon.

Digitized by Google

Court of Appeals of the District of Columbia.

AUGUSTUS L. SHAFFER, APPELLANT,
v.
THE UNITED STATES OF AMERICA.

HOMICIDE; EVIDENCE; PHOTOGRAPH OF ACCUSED; LEADING QUESTIONS; PROOF OF HANDWRITING; WITNESSES; INSANITY; EXPERT TESTIMONY; OPINIONS OF NON-EXPERTS.

1. In a prosecution for homicide, where it was shown that at the date of the homicide defendant wore no beard but only a moustache, while at the trial he wore a full beard, a photograph taken by the officer having him in custody shortly after his arrest is admissible to enable a witness to identify defendant as the person seen loitering in the vicinity of the scene of the crime.
2. The taking of the photograph while under arrest, and its use as stated, was not a violation of the principle that an accused person can not be required to give evidence against himself or to furnish evidence to be so used.
3. The allowance of a leading question will be regarded as matter of substantial error only where the appellate court can see that a witness has been led, by the form of the question, to make an answer prejudicial to the objecting party.
4. It is not required that a witness testifying to the handwriting of a party should have seen him write; but proof of handwriting may consist of ordinary circumstantial evidence showing a reasonable probability of the writing having been made by the person purporting to have made it.
5. Evidence held sufficient to show the loss or destruction of a letter alleged to have been written by a person accused of homicide so as to admit secondary evidence of its contents, and to show that it was in the handwriting of the accused, the jury being instructed to disregard it unless they should find, beyond a reasonable doubt, that it was written by him.
6. Where in the list of witnesses furnished by the prosecution to the defendant, as required by sec. 1038 R. S., the names of two persons, mother and daughter, whose names are identical and who lived at the same address, are included, but there is nothing to indicate which was the mother and which the daughter, the defendant is not justified in assuming that both refer to the same person; and both are competent to testify, especially where there is no showing that the defendant was in any manner misled or prejudiced thereby.
7. A medical witness, whose competency as an expert is unquestioned, may give his opinion as to the sanity of an accused at the time of the homicide, based upon a full personal examination of the accused made two months and eight days thereafter.
8. A charge by the trial court to the jury, in effect that no weight was to be given to opinions of lay witnesses or non-experts on the question of insanity unless based upon facts testified before them, and unless the jury entertain the same opinion on the facts proven before them, held proper, when read in connection with other parts of the charge in reference to the question of insanity.

No. 1477. Decided December 13, 1904.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding a Criminal Court, Criminal, No. 23,891, entered upon a verdict finding him guilty of murder in the first degree. Affirmed.

Mr. Henry E. Davis, *Mr. W. J. Lambert*, and *Mr. D. W. Baker* for the appellant.

Mr. Morgan H. Beach and *Mr. Charles A. Keigwin* for the United States.

Mr. Chief Justice ALVEY delivered the opinion of the Court:

The appellant in this case was indicted on the 3d day of November, 1903, for the wilful and premeditated murder of his divorced wife, Catharine Shaffer, on the 22d day of August, 1903, on one of the public streets of the city of Washington. The accused was arraigned and pleaded not guilty, and upon trial by jury he was found guilty of murder in the first degree as indicted. Many exceptions were taken by the accused in the course of trial; and upon sentence that he be hanged, he has taken this appeal.

The crime as charged in the indictment is, that the accused feloniously, purposely, and of his deliberate and premeditated malice, did, on the day named, assault the said Catharine Shaffer, and then and there with a razor inflicted in and upon the right side of the neck of her the said Catharine Shaffer, one mortal wound of the length of seven inches and of the depth of three quarters of an inch, of which said mortal wound the said Catharine then and there instantly died.

On the trial, the Government proved the homicide as charged, to have been committed on the 22d day of August, 1903. There was no question made as to the commission of the crime by the accused; that was conceded. The accused and the deceased were married in the year 1891, and were divorced upon the application of the wife on the 16th day of April, 1901. By the decree of divorce, the custody of their son William was given to the father, and the custody of their daughter to the mother, the deceased. For two or three weeks immediately prior to the homicide the accused had been seen loitering in the neighborhood of the corner of the street which was about half a square from the home of the deceased; and on several occasions during that period had accosted deceased in the street and attempted to induce her to grant interviews with him, which she refused to do. On one of these occasions, after the deceased had refused him an interview, the accused boarded a street car upon which the deceased was riding and rode for some distance thereon while she was on the car. On other occasions, he was seen frequently following her from place to place. On the Sunday night immediately preceding the homicide, he had followed her home, saying, as she entered the house, "God damn you, Kate, wait." Three days before the homicide, the accused had called at about eleven o'clock in the evening, at the house where the deceased lived, and made an unsuccessful effort to see her, after which he loitered in front of the house until about one o'clock in the morning. The homicide was committed at or near the southwest corner of Fourth street and Massachusetts avenue, between the hours of eight and nine o'clock in the evening. The accused approached the deceased, and said to her, "Kate, it is my time and my chance now." He then seized her with one hand, and cut her throat with a razor. Immediately afterwards, when asked by a bystander, who had approached, why he had done such an act, his reply was that the woman was his wife, and that she had done him dirty, and that he ought to have done this years before, adding an opprobrious epithet. To another bystander he said, "Go down to her house and tell her people." And to another person, as he was being taken to the station house, he said: "It is done now, and there is no use talking about it; you see that I am not worried." There was evidence tending to prove that prior to the homicide the

Digitized by Google

accused wore no beard; that he wore no beard when a photograph was taken of him at the police station, but that, during the trial, he wore a full beard. There was also given in evidence to the jury the contents of a letter purporting to have been written by the accused to the deceased, about a month prior to the homicide. The letter was written from Beltsville, Maryland, and purported to be in answer to one written by the deceased to her son Willie, who was with his father at Beltsville. In that letter, purporting to have been written by the accused, the writer said: "I will be home about the 4th of August, and if you do not see me I will fix you in a way you do not like. I do not intend those damned Ivey girls to make a fool of me. You will see where you land. Yours, Gus. S."

The original of this letter was shown to have been lost, and there was considerable contest over the effort on the part of the government to prove the handwriting of the accused, in order to establish the genuineness of the letter. Proof, however, was admitted of the handwriting as being that of the accused, and the contents of the letter were allowed to be given in evidence.

At the conclusion of the evidence for the prosecution in chief, the accused offered evidence to support his defense. As we have said, there was no denial of the fact of the commission of the homicide by the accused. His defense was that of insanity at the time of the commission of the act. He offered and gave in evidence tending to show that he was by nature easily excitable to passion; that when under the influence of passion he was liable to become incapable of controlling himself; would lose all power to control himself; was liable to do anything, and was a practical maniac; also, that he was addicted to drink, and when under the influence of excessive drink was similarly liable to lose possession of his senses, and to act in a manner indicating want of control of his will and other faculties; that at the time of the homicide under inquiry, he was greatly intoxicated; and further, that at the time of the said homicide he was of unsound mind and insane.

By a number of witnesses, according to the statement in the bill of exceptions, the accused gave evidence tending to show that said witnesses had known and associated with the accused for various longer and shorter periods of time; in some instances beginning with his boyhood, and continuing down to the time of the trial; that, in general, his conduct was strange and unusual, and in his boyhood he was called by his companions "Looney Shaffer;" and, in his boyhood, and afterwards, was called by some who knew him, "Crazy Gus;" that some of the witnesses had worked and lived in the same house with him before and up to within a short time of the homicide, and that said witnesses observed a number of actions which they characterized as "queer," "peculiar," "eccentric," some of said actions consisting, as they thought, of crazy talk; that he would excitedly wave his arms, seemed to have a grievance for which no foundation appeared; would burst into tears, look in a blank way; would get so rattled that he did not know what he was doing; would repeat orders and give conflicting orders to those employed under him; did odd and unnecessary and inexplicable things in the conduct of his business; had a peculiar look or stare; was at times morose and sullen, and at other times exceedingly violent; talked very disconnectedly at times; had hallucinations as to people following him; and had such hallucinations the night before the homicide; he became wild when he talked about the deceased; and did other acts indicating a peculiar and weak nature; all which several matters and things were narrated to the jury; and that, from the observation and knowledge of the same, the said witnesses testified that they had formed and entertained an opinion that the accused was of unsound mind, and irresponsible for his acts. But some of the witnesses who testified for the accused, testified that they did not consider, and never had considered, the accused insane.

The prosecution, in rebuttal, offered and gave in evidence by witnesses who testified, that they had known the accused for long periods, and that they never had considered him other than of sound mind; that for six or seven years he was foreman in charge of the delivery station of the Blue Line fast freight, and had charge of the delivery of about fifteen carloads of freight per day; and had authority to employ and discharge men, and that there were from fifteen to twenty-five men under his charge. Other witnesses testified that for about two years preceding the homicide, the accused was employed in the Government Printing Office, in a position requiring a considerable degree of intelligence, and that he did his work intelligently, faithfully, and well.

While there were more exceptions contained in the record, the assignments of error are reduced to six, and they are as follows:

1. That there was error in overruling the appellant's objection to the admission of the photograph of the appellant in evidence, and in permitting the witness, Mary Hoy, to examine said photograph.

2. That there was error in overruling appellant's objection to the leading question asked the witness Agnes Ivey, as to her knowledge of appellant's handwriting.

3. That there was error in allowing, over appellant's objection, several witnesses to testify as to the contents of a letter alleged to have been written by the appellant.

4. That there was error in permitting, over appellant's objection, the witness, Miss Georgia C. Ivey, to testify in the case, because not properly named in the list of witnesses required to be furnished the accused.

5. That there was error in permitting, over appellant's objection, Dr. Jelliffe, an expert witness, to give his opinion as to the condition of mind of the appellant on August 22, 1903, based upon an examination made by him about November 1, 1903.

6. That there was error in charging the jury that no weight was to be given to the opinion of a layman on the question of insanity, unless that opinion was based upon facts testified to before the jury, and unless the jury entertain the same opinion as the layman on the facts proven before them.

Digitized by Google

We shall examine these assignments of error in the order in which they are stated, though the assignments of error are not made in the order of the exceptions taken, as stated in the bill of exceptions.

1. The first of these assignments of error relate to the admission for use in evidence of a photograph of the accused, which was taken by a police officer shortly after the homicide, and while the accused was under arrest. The facts under which the photograph was proposed to be used were these: It had been shown in proof by a witness, Miss Hoy, that she had seen a man loitering in the neighborhood of the corner where the homicide was committed for some time before the killing occurred. She was unable to identify the accused as that man. At the date of the homicide the accused wore no beard on his face but a mustache only, while at the trial he wore a full beard. The witness was shown the photograph, and she recognized it as the picture or photograph of the man she had observed near the corner. To this offer and use of the photograph the accused objected, but his objection was overruled, and the photograph was allowed to be used as proposed and the witness to testify to the identity of the accused, with the aid of the photograph. The accused excepted to this ruling.

It is conceded that the photograph used at the trial was the one taken by the officer of the accused while the latter was in custody, under arrest for the homicide. It has become the settled practice of courts to recognize photography as a proper means of producing correct likenesses both of individuals, and other objects, and therefore photographs are allowed to be produced in evidence to enable witnesses to establish the identity of persons and places,—such proof frequently becoming necessary to enable courts to establish essential facts when other proof might be difficult to obtain. Udderzook v. Com., 76 Penn. St. 340. Applying this principle, it has been held, that on an indictment for bigamy, a photographic likeness of the first husband could be shown the witnesses present at the first marriage, in order to prove his identity with the person mentioned in the marriage certificate. Regina v. Tolson, 4 F. & F. 103. And so in the case of State v. Ellwood, in the Supreme Court of Rhode Island, 24 Atl. Rep. 782, it was held that a picture of the defendant taken shortly after his arrest was admissible to show his appearance at that time, as compared with his appearance at the time of the trial, when he had in the meantime grown a moustache and otherwise changed his personal appearance. And in the case of Com. v. Morgan, in the Supreme Court of Massachusetts, 34 Northeastern Rep. 458, on a trial for larceny, a witness testified that at the time of the commission of the crime the defendant had side whiskers and a mustache, while certain witnesses for the defendant testified that they had known the defendant since the spring of 1887, and that he had never worn side whiskers. In this state of proof it was held that it was proper to admit in evidence a photograph of defendant to show that when it was taken in July, 1887, he wore side whiskers. There are many other cases that might be cited to show that photographic pictures are constantly used as means of evidence in courts of justice, and especially on questions of disputed identity.

But we understand the main point of this objection to be, that as the witness produced to identify the accused failed to identify him, it was not competent to the government to place in the hands of that witness a photographic picture taken of the accused by the police officer, after his arrest and while in the custody of the officer, for purpose of identification. In other words, that the government had no right to photograph the accused while holding him in custody for the purpose of using that photograph to have him identified at the trial. This objection is founded upon the theory that the use of the photograph so obtained is in violation of the principle that a party can not be required to testify against himself or to furnish evidence to be so used. But we think there is no foundation for this objection. In taking and using the photographic picture there was no violation of any constitutional right. There is no pretense that there was any excessive force or illegal duress employed by the officer in taking the picture. We know that it is the daily practice of the police officers and detectives of crime to use photographic pictures for the discovery and identification of criminals, and that, without such means, many criminals would escape detection or identification. It could as well be contended that a prisoner could lawfully refuse to allow himself to be seen, while in prison, by a witness brought to identify him, or that he could rightfully refuse to uncover himself, or to remove a mark, in court, to enable witnesses to identify him as the party accused as that he could rightfully refuse to allow an officer, in whose custody he remained, to set an instrument and take his likeness for purposes of proof and identification. It is one of the usual means employed in the police service of the country, and it would be matter of regret to have its use unduly restricted upon any fanciful theory of constitutional privilege.

2. The second assignment of error relates to what is alleged to have been a leading question allowed to Agnes Ivey.

The question was in the following form: "Were your opportunities of examining these orders from the defendant of such a character as to enable you to recognize his handwriting if you saw it again?" Whether this question was leading in its character depended upon the circumstances under which the examination had been conducted; and the fact that it may have been leading, did not necessarily make it objectionable. It is only where the appellate court can see that the witness has been led, by the form of the question, to make an answer prejudicial to the objecting party, that such question will be regarded as matter of substantial error. Ordinarily, the form of the question and the course of the examination of the witness are matters within the discretion of the court below, not subject to review. The conduct and intelligence of the witness, as well as the purpose to improperly lead him to make biased and colorable answers to questions, are all matters within the view and observation of the court below; and an appellate court will assume that the court below is best able to

Digitized by Google

regulate and impose the proper restraint upon the examination. But, in the present instance, there is no sort of ground for the objection urged. For, in the course of the subsequent examination of the witness, the same fact is elicited and brought out in distinct form as that in answer to the alleged objectionable question; and therefore no prejudice could have resulted from the question objected to, but allowed by the court. There was no error in that ruling.

3. The subjects of the third assignment of error are the rulings of the court in relation to evidence to establish the handwriting of the accused, and the contents of the letter purporting to have been written by the latter to the deceased from Beltsville, Md., dated July 26th, (or 27th), 1903. The handwriting was proved and the contents of the letter, (the letter itself having been proved to be lost,) were admitted in evidence. The rulings under which this evidence was admitted were all excepted to by the accused.

It appears from the evidence in the record, that in the latter part of July, 1903, the accused was at Beltsville, Maryland, with his little son Willie, and a friend by the name of Myers. The son's birthday occurred on the 23d or 24th of that month, and about that date the deceased, the mother of the boy, wrote a letter to her son in regard to some small articles which she had procured as presents for him on his birthday. After the death of the mother, a letter dated from Beltsville, on the 26th or 27th of July, and purporting to come from the accused, was found among her effects. The material part of this letter has already been stated. The letter was accidentally lost or destroyed, but not until after it had been read by Mrs. Ivey, the mother of the deceased, and the two sisters of the deceased, Miss Agnes Ivey and Mrs. Elizabeth Sage.

The Government gave evidence tending to prove the finding of this letter among the papers of the deceased, and that it had been lost or destroyed, and that it was in the handwriting of the accused. It was proved that the accused was at Beltsville on the day on which the letter was written or dated; that his son Willie and Mr. Myers were with him; that Willie had received a letter from his mother in regard to his birthday presents; and that the letter purporting to be from the accused made reference to all these circumstances, and stated that he intended to return to the city on the 4th of August following, and that he did return on that day.

The contents of the letter being objected to, upon the ground that the letter had not been shown to have been in the genuine handwriting of the accused, nor its contents properly established by competent proof, the Government proceeded to show by proof, that the letter was found by Agnes Ivey, a sister of the deceased, about a week after the homicide, in a box of stationery among the effects of the deceased in the room occupied by her for several months prior to her death. The deceased had lived with her mother and sisters up to the time of her death, and there were no other occupants of the house; they kept no servant; and no one else had access to the room. Miss Ivey, immediately upon finding the letter, had taken it to her mother and her sister, Mrs. Sage, who read it, and the letter was left in the custody of the mother. The family were at the time preparing to move to another house, and shortly thereafter did remove. Some months after the homicide, occasion arose to examine the letter, but it could not be found. A very full and exhaustive search was made for it, in every place where the paper might be placed, but without success. Many papers had been destroyed, and among them some that belonged to the deceased. Mrs. Ivey, Mrs. Sage, and Miss Agnes Ivey all testified to the fact of the search, and their inability to find the letter. The other two inmates of the house testified that they had never seen the paper, and there was no other person in or about the house that could have taken the paper out of its place of deposit.

This proof was certainly sufficient to let in secondary evidence of the contents of the paper, provided the genuineness of the handwriting of the accused be established as that in which the letter was written; and this was a question about which there was severe contest on the part of the accused, the effort being to exclude the evidence offered on the part of the Government for that purpose.

The handwriting of the accused was proved by one witness who had seen him write, though in an imperfect way; by two witnesses who had seen writing known to be his, and by the fact that the letter in question bore intrinsic evidence that it was in reply to the prior letter of the deceased written to the little son then in the care of his father at Beltsville.

Mrs. Sage, a sister of the deceased, and one of the witnesses who had seen the letter after the homicide, swore that she had seen the accused write, that she had seen his writing, and that she knew his handwriting; and that the letter found among her sister's effects after her death, written in July, she read and knew it to be in the handwriting of the accused, and it was left with her mother. But she states that she could recall no particular occasion on which she had seen him write, except one time at a game of cards in which he kept the score; that she could not say that on that occasion he had written any name, but she saw the column of figures which he had written. She further testified that she had seen letters written by the accused to her sister before they were married; and that she, herself, had on one occasion received a letter from him, when she was out of town, in which she referred to a misunderstanding between them, and he made an apology for some conduct of his which had given her offense.

The witness Agnes Ivey by whom the letter to the deceased was found after the homicide, but subsequently lost or destroyed, read the letter before it was delivered to her mother, and she testifies that the letter was in the handwriting of the accused. As means of knowledge of his handwriting she testifies that she had been employed as a bookkeeper at a grocery and bakery at which the accused was in the habit of dealing. To this place he used to send written orders for goods, which orders were filled by the witness and by her charged upon his pass book. The book was always returned to the ac-

Digitized by Google

cused. The book was brought by the son of the accused, who, at that time, was too young to write, and there was no one at the house of the accused except himself who could have written the orders.

The facts as proved by the two witnesses, Mrs. Sage and Agnes Ivey, are, in our opinion, sufficient to constitute the foundation of knowledge to enable each of them to testify to the genuineness of the handwriting of the accused, and that the lost letter was in his handwriting. And as to the proof of the loss or destruction of the letter and of the contents thereof, there would seem to be no room for doubt or question. That proof was amply furnished by the testimony of Mrs. Ivey, the mother of the deceased, and the two sisters, Mrs. Sage and Miss Agnes Ivey. The letter was brief, and they all concur in testifying to substantially the identical terms of it.

It has been earnestly insisted, and many authorities cited to support the contention, that the evidence was not sufficient to let in proof of the contents of the letter. But we think, on the decided weight of authority, that the evidence was amply sufficient for that purpose. It is not required that the witness testifying to the handwriting of a party should have seen him write; knowledge of handwriting may be acquired by other means. Proof of the handwriting of a party may consist of ordinary circumstantial evidence, showing a reasonable probability of the writing having been made by the person purporting to have made it. Indeed, all evidence of handwriting, except where the witness saw the document written or signed, is, in its nature, comparison. It is the belief which a witness entertains, upon comparing the writing in question with its exemplar in his mind, derived from some previous knowledge acquired in some of the various ways mentioned in the books, that the writing in question is genuine. 1 Greenl. Ev., secs. 576, 577. Where the writing upon which the witness founds his opinion or knowledge of the party's handwriting are letters or other writings, and are of such a nature as to make it probable that they were written by the hand from which they purport to come, the witness in such case will be admitted to speak to that person's handwriting. "As said by Mr. Phillips (2 Phill. Ev. p. 600), the admissibility of the evidence must depend upon this, whether there is good reason to believe that the specimens from which the witness derives his knowledge were written by the supposed writer of the paper in question." Or, as said by the same learned author (id. p. 601), "The knowledge of handwriting may be acquired by these or any other modes of communication between the party and the witness, which, in the ordinary course of the transactions of life, would induce a reasonable presumption that the letters or documents were the handwriting of the party."

In recent times the rule upon this subject, like the rule in respect to most questions of evidence, has been considerably liberalized and extended, and made to conform to the reasonable requirements of the present methods of the ordinary transactions of life; and this is shown by what was said by the Supreme Court, in the case of Rogers v. Ritter, 12 Wall. 317, 322. In that case, in speaking of the knowledge of handwriting and the modes by which that knowledge may be acquired, the court said: "The difficulty has been in determining what is proper knowledge, and how it shall be acquired. It is settled everywhere, that if a person has seen another write his name but once he can testify, and that he is equally competent, if he has personally communicated with him by letter, although he has never seen him write at all. But is the witness incompetent unless he has obtained his knowledge in one or the other of these modes? Certainly not; for in the varied affairs of life there are many modes in which one person can become acquainted with the handwriting of another, besides having seen him write or corresponded with him. There is no good reason for excluding any of these modes of getting information, and if the court, on the preliminary examination of the witness, can see that he has that degree of knowledge of the party's handwriting which will enable him to judge of its genuineness, he should be permitted to give to the jury his opinion on the subject."

At the conclusion of the evidence, the court gave a very explicit instruction to the jury in regard to the letter in question; and instructed the jury, that before they could consider the alleged contents of the letter claimed to have been written by the accused in July, 1903, they must find from the evidence, beyond a reasonable doubt, that it was in the handwriting of the accused. With this instruction before them, to be considered in connection with all the evidence upon the subject, it is difficult to perceive how the jury could have been led into any mistake in their finding upon the subject. We think there was no error in any of the rulings of the court covered by the third assignment of errors.

4. The next assignment of error relates to the alleged incompetency of a witness, Miss Georgia C. Ivey, to testify for the Government, because not properly designated in the list of witnesses to be called for the prosecution, and which is required to be furnished the accused, under section 1033 of the Revised Statutes of the United States. The object and purpose of the provision is to furnish the accused with a list of the witnesses upon whose testimony he may be tried for the crime charged against him. In this case, the witness and her mother had names precisely identical, and both lived in the same house. In the list of witnesses the name Georgia C. Ivey appeared at two places, separated by thirty-four intervening names. Neither was distinguished by the prefix Miss or Mrs., and there was nothing to indicate which was the mother or which was the daughter. They both had the same place of address. Was the accused justified in presuming that there was but one person represented by these names so appearing in the list?

There is nothing to show that the accused was in any manner misled, or in any way prejudiced, by the manner in which the two witnesses were named in the list. The point of the objection seems to have been that the persons named should have been distinguished by some proper prefixes or additions to indicate that they were different persons. But there was no presump-

Digitized by Google

tion that there was but one person in fact named twice in the list. The presumption was rather the other way, that there were two different persons of the same name, living in the same house. This we know is frequently the case in families,—the father and son, or mother and daughter bearing the same name. But there is nothing in the statute to require the use of prefixes or affixes to names for purpose of distinction. If the accused had really been in doubt as to the matter, and deemed it of importance to his defense, he could easily have applied to the court for direction to the prosecution officers to make the necessary correction in the list, and thus remove the difficulty—a thing that the court, in its discretion, would have readily done, if there was reason to suppose that the accused was liable to be misled to his prejudice. But no such action was taken; and the witness was simply objected to as incompetent to testify for the Government. We perceive no error in overruling the objection to this witness.

5. The fifth assignment of error relates to the ruling of the court in permitting Doctor Jelliffe, a competent expert witness on questions of insanity, to give his opinion as to the condition of mind of the accused on August 22, 1903, based upon an examination of the accused made by the witness November 1, 1903,—the examination being made after an interval of two months and eight days from the time of the commission of the crime. There is no question about the competency of the witness to speak as an expert,—that is conceded. The question is as to his competency to give an opinion as to the sanity or insanity of the accused at the time of the homicide, based upon a full personal examination of the accused made two months and eight days thereafter. A very full personal examination appears to have beeen made by the witness of the accused while the latter was confined at the jail; and, against the objection of the accused, the witness was allowed to give an opinion that the accused was sane at the time of the commisison of the crime. This opinion was formed, of course, upon the condition of the mind of the accused as shown at the time of the examination, and such indicia as existed of its previous condition. The mental defects spoken of by some of the witnesses for the accused were of a congenital nature, or natural infirmities of mind, manifesting themselves through life. But we can not perceive the reason why, if mental maladies existed of any kind, the skilled expert in the science of mental diseases, would not be able to discover the signs or traces of such disease after so short a time from the violent manifestation of such mental disorder, as is claimed to have existed in the case of the accused. Mental diseases, or the violent and unrestrained disorders of the mental powers, do not disappear in a day, or a week, or a month, except in cases of casual drunkenness. And if such mental derangement existed as to render the accused irresponsible for the brutal and shocking homicide of his former wife only two months and eight days before the examination by the witness, it is hardly conceivable that all traces and indicia of the malady by the time of the examination, had disappeared, so that the skilled witness was led into an erroneous and unfounded opinion as to the sanity of the accused at the time of the homicide. If the diseased and insane condition of mind existed, as supposed, at the time of the homicide, that condition of mind would have existed, at least to some extent and in some form, at the time of the examination of the accused by the witness, and the latter would have been unable to conclude, as he did, from the then condition of the party, that his mind was sane, and was sane at the time of the homicide; or, in other words, that the accused "was of sound mind." The witness being a skilled expert, and having stated that he could form, and had formed, an opinion as to the sanity of the accused at the time of the homicide, based upon a personal examination of the accused made two months and eight days thereafter, that opinion of the sanity or soundness of mind of the accused was admissible as evidence to the jury to be considered by them.

There is nothing singular or peculiar in such opinion or the mode of arriving at it. Similar questions have been before the courts before the present, and have been disposed of as we have disposed of the present question. In the case of Freeman v. People, 4 Denio, 8, 40, the judge, in delivering the opinion of the court, said: "I entertain no doubt that such a witness (an expert witness) should be allowed to express an opinion in regard to the mental condition of a person alleged to be insane in the month of March, although the opinion may have been founded solely upon an examination made in the following July. In most cases, undoubtedly, the opinion would be more satisfactory and convincing when based on observation made at or about the time to which the inquiry relates. But this is not decisive against the reception of such evidence, though founded upon an examination made at a later period. The competency of the testimony is one question, and its effect another. The former is for the court, the latter for the jury. It will sometimes, no doubt, be found, and perhaps not unfrequently, that the mental malady is such that an examination would disclose beyond all peradventure to a skillful physician what must have been the condition of the patient for months or years before."

In the case of People v. Hoch, 150 N. Y. 291, the question was somewhat different, but it was ruled upon the same principle as in the preceding case. In Hoch's case, the district attorney showed by a skillful physician, who had charge of Auburn prison, that he, the witness, had made an examination of the defendant, for the purpose of ascertaining his mental condition, just before and during the trial. He had observed him from day to day, and he stated just what he had done in examining him. He was asked whether, in his opinion the defendant was sane or insane; to which question an objection was made, because it did not relate to the time of the homicide, but the objection was overruled. The contention on the part of the defendant was, that the inquiry should be as to his condition on the day of the homicide, and not at the time of the trial. "Of course," said the court, "the issue turns upon the previous mental condition at the time of the homicide—whether he was then laboring under such a defect of reason as to render him incapable of knowing the

Digitized by Google

nature and quality of the homicidal act or was incapable of knowing that it was wrong. But there is no apparent reason, and I know of no authority, for holding that in addition to all the other facts, the jury may not be informed, by any one competent to speak, as to the mental condition of the defendant at the time of the trial. He stands before them accused of crime, with the plea of insanity to shelter him from conviction at their hands, and in their consideration of his plea for exoneration, no competent evidence bearing upon his mental condition at the time of the homicide, or since, should be excluded; and the evidence objected to certainly can not be said to be prejudicial to any substantial rights of the accused, or to contravene the demands of justice."

The witness in the present case had no hesitation in saying that he was able, from the examination had, to form an opinion of the mental condition of the accused at the time of the homicide, and that he was then of sound mind. We are clearly of opinion that this evidence of the witness was admissible, and that there was no error in the ruling of the court in respect thereto.

6. The last assignment of error relates to a passage in the charge of the judge below to the jury, upon the whole evidence, wherein the jury were told that no weight was to be given to the opinion of lay witnesses or non-experts on the question of insanity, unless that opinion was based upon facts testified to before the jury, and unless the jury entertain the same opinion as the witness on the facts proven before them.

The passage in the charge upon which this assignment of error is based is as follows: "But sometimes questions come along of a nature such that all the facts bearing upon the matter are not susceptible of being reproduced before the jury through the medium of words. So it is with the question of the mental condition of an individual; it is not possible to reproduce before you all the facts which are indicia upon this point; for example, appearance, expression of countenance, attitude, continuity or rationality of discourse, or the opposite of it, or the like; therefore in such an inquiry it is appropriate to hear opinions upon the point from those whose personal observation of the facts of the matter has been such as to qualify them to form intelligent opinions upon the very point. But the opinion of a layman, although expressed before you, is without weight unless it appear that as a foundation for the opinion he entertained a knowledge of facts proven before you, which, in your judgment, warrant and support the opinion which he has expressed. Another class of opinions which you have heard, is that of physicians," etc.

What is said in this passage of the charge of of the learned judge would seem to have been said by way of contrasting the mere naked opinions of the lay witnesses with those of the skilled physicians. The whole charge must, however, be read together, to ascertain the real meaning and import of the language of the judge; and we think there is no ground for imputing error to this particular passage when read in connection with what precedes and what succeeds it in reference to the question of insanity. The question of the competency of the witness is for the court, and the court must see, in order to determine the question of competency, that the witness has such knowledge as will enable him to express an opinion as to the sanity or insanity of the party whose mind is the subject of inquiry; for otherwise the witness would not be competent to testify, not being an expert. But when the witness is held to be competent, the question of the weight and value of his opinion, or whether it is of any value at all, is solely a question for the jury. And the question of the value of his opinion will depend upon the circumstances under which he testifies; the degree of intelligence displayed by him; his opportunities for knowledge of the party under inquiry; and his knowledge of facts and circumstances calculated to make an impression upon an observer as to the mental condition of the party whose mind is the subject of inquiry. But if, upon examination of the witness, it be found that he is without reliable knowledge of the party, his habits or peculiarities, or his mode of life, and only has a slight acquaintance with him, and such as can not, in the nature of things, enable him, the witness, to form an intelligent opinion of the mental condition of the party, then such an opinion, though it be expressed, is entitled to no weight whatever, as a means of forming a rational basis for the verdict of a jury. If, therefore, the jury be satisfied in their own minds that such a witness, that is, a non-expert witness, is thus without reliable knowledge of facts or circumstances to enable him to form an opinion as to the sanity or insanity of the party whose condition of mind is the subject of inquiry, it would seem to be clear that the opinion of such witness is without weight or value, and that there would be no error in the judge in so informing the jury; and that is all that was done in this case, in the charge that was given the jury, as we read it.

The courts have not always been uniform in stating the rule upon which the opinions of non-expert witnesses are received and allowed to be considered by the jury, on questions of alleged insanity. But, as said by the Supreme Court, in Conn. Mut. Life Ins. Co. v. Lathrop, 111 U. S. 619, in stating the rule upon this subject—"The jury being informed as to the witness' opportunity to know the circumstances and of the reasons upon which he rests his statements as to the ultimate general fact of sanity or insanity, are able to test the accuracy or soundness of the opinion expressed, and thus they, by using the ordinary means for the ascertainment of truth, reach the ends of substantial justice." This is simply saying that, in the light of all the circumstances and reasons that may be stated by the witness as the basis of his opinion, the jury may be able to test the accuracy or soundness of the opinion expressed; and, of course, if the jury are satisfied that the opinion expressed by the witness is without foundation in reason or fact, that opinion can have no weight in enabling the jury to reach a rational conclusion on the question of sanity vel non.

In the very recent case of Queenan v. Oklahoma, 190 U. S. 548, the question arose as to what a non-expert witness could prove as to

Digitized by Google

the condition of the prisoner's mind. It was a case of homicide, and where the only defense was insanity. A lawyer, called as a witness for the defendant stated that he knew the prisoner quite well; that the prisoner was his barber and had been for some years, and that he saw him on the day before the killing. He then described the appearance and conduct of the prisoner, and said that at the time he did not notice any difference from the prisoner's usual demeanor. He was then asked if since the killing he had formed an opinion as to the prisoner's mental condition at that time. This opinion he was not allowed to state; and this refusal to allow the opinion to be given, was alleged as error. "It will be seen," says the Supreme Court, "that the witness was allowed to sum up his impressions received at the time. The court said in terms that he might state any condition that existed then or any impression that it made upon the witness' mind as to the prisoner's condition. That is all that was decided in Conn. Mut. Life Ins. Co. v. Lathrop, 111 U. S. 612." The ruling of the court below was affirmed.

Upon reading the entire charge of the judge to the jury, we can perceive no possible ground of complaint by the accused. Take it altogether, and the case was most favorably presented for the accused. After the passage in the charge upon which error is assigned, and in conclusion, the court said: "Gentlemen of the jury, you are the sole judges of the facts in the case, and essentially the sole judges of the credibility of the witnesses who have appeared upon the stand. And you must accord to individual witnesses and the testimony given by them that degree of effect, in reaching your verdict, which in your honest judgments you think they ought to have, taking into consideration, in so far as you can conclude upon that point, from the manner and appearance of the witnesses upon the stand, and the manner of the giving of their testimony—whether it be frankly and honestly given; his apparent intelligence, or the lack of it; what his opportunity and ability was to observe facts that transpired within his presence or what was his radius of observation at the time, his capacity to remember what he has at prior times observed, and lastly, his ability to express and communicate here to you through the medium of words, accurately that which passed within his observation at prior times; considering what, if any, interest a witness has in the outcome of the case; and whether on this account he is coloring in any way the facts related in his testimony; and again, whether or not there be manifested by any particular witness, feeling; and if so, whether or not that is coloring his testimony, one way or the other."

It would seem that all pertinent considerations were fully presented to and left open for the determination of the jury; and upon full review of the case on the errors assigned, we find nothing to require a reversal of the judgment below. An over-refinement in the application of principles is seldom promotive of justice; and where a case has been fairly tried, over-refined distinctions or forced application of technicalities should never be indulged, when that indulgence leads necessarily to the defeating of a fair trial. Nothing less than substantial error should produce that result.

We must affirm the judgment, and it is so ordered. Judgment affirmed.

Accident Insurance — Application — Misrepresentations—Materiality.

In Offiner v. Brotherhood of American Yeomen, decided by the Kansas City Court of Appeals, Missouri, in November, 1904 (83 S. W. 67), it was held that under an accident policy making statements in the application a part of the policy and the only basis thereof, and stipulating that such statements are true and strict warranties, but containing an agreement by assured that in the event of his having concealed or misrepresented any facts "found to be essential in considering the risk," the policy shall be void, a misrepresentation does not avoid the policy unless it is essential to the risk. The court said:

This action is based on an accident benefit insurance policy. The plaintiff prevailed in the trial court.

Plaintiff claimed the loss of one of his eyes by an accident. The sole defense is misrepresentation of matters connected with the condition of his eyes when insured and prior to that time, which misrepresentations, defendant contends, were warranted to be true. The certificate contained the following provisions in reference to warranties and representations:

"First, That the statements in the application of said member and his answers in the medical examination, a copy of which appears upon the back hereof, and which is hereby made a part of this agreement, are true in every particular, and shall be held to be strict warranties, and shall, with the by-laws of this association, form the only basis of this contract, and for the liability of the order under this certificate the same as if fully set forth herein.

"I further agree that in the event of my having concealed, misrepresented, or suppressed any facts as to my personal or family history, as to disease or habits, or physical condition or my own condition now or in the past, which shall be found to be essential in considering my risk, the certificate to be issued hereon shall be null and void, at the election of the society issuing the same, and in such event I agree to forfeit both such certificate and all payments I shall have made thereon."

Interpreting the entire provision, we conclude, notwithstanding the positive language in the forepart of the foregoing quotation, that a misrepresentation, to be an effectual bar to plaintiff, must be one that was "essential" or material to the risk. We must allow some material and substantial force to the words "which shall be found essential in considering my risk."

The plaintiff's case showed that he was a carpenter, and while engaged in his work some foreign substance struck him in the eye, in consequence of which it became necessary to take out his eye. The question of whether the representation made by plaintiff to defendant when he took out his insurance was essential to the risk was properly and clearly submitted to the

Digitized by Google

jury, and we will not disturb the finding. In Moulor v. Ins. Co., 111 U. S. 335, 4 Sup. Ct. 466, 28 L. Ed. 447, it was held that when a policy of insurance contains contradictory provisions, or has been so framed as to leave room for construction, rendering it doubtful whether the parties intended the exact truth of the applicant's statements to be a condition precedent to any binding contract, the court should avoid a construction which would put upon the assured the obligation of a warranty.

Sunday Law—Public Policy.—The Supreme Court of North Carolina, in the case of Rodman v. Robinson, denied the right to declare a contract made on Sunday void because opposed to public policy.

Limitations—Part Payment.—In Rogers v. Newton, decided by the Supreme Court of New Jersey in November, 1904, 58 Atl. 1100, it was held that a payment upon a book account, which has never been recognized in its entirety, without proof showing that such payment was made in recognition of the whole claim and as a payment upon account thereof, will not take the unpaid part of the account out of the Statute of Limitations.

Sale—Warranty—Acceptance—Notice.—The Kentucky Court of Appeals held, in the recent case of Yeiser et al. v. Russell et al., that where a vendee accepts goods delivered under a warranty of quality or retains them after discovering they are not the goods purchased, and fails to give notice within a reasonable time that he declines to receive them because not in conformity to the contract, he can not thereafter refuse to pay for them.

WILSON & MAYERS,

AUCTIONEERS,

1227-1229 G STREET, N. W.

Personal Attention Given to all Business Intrusted to us.

Prompt Returns. Unexcelled Service.

Large display rooms, centrally located, for the sale of Merchandise and Personal Property.

1680

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1664 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

Washington College of Law,

1403 New York Ave. N. W.

Ninth year opens **Monday, October 3, at 7 p. m.,** with an introductory lecture, to which the public is cordially invited.

Three years' course leading to degree of LL. B. Postgraduate courses of one year leading to degree of LL. M.

Full corps of eighteen lecturers and professors. Admits as students women and men properly qualified. Lectures between 6.30 and 9 p. m. Tuition, $50 a year.

For year books or further information apply to the Dean.

E. S. MUSSEY, LL. M.,

'Phone East 334-M. 1649 416 Fifth St. N. W.

Legal Notices.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

David H. Fenton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Harrison Allen, Deceased.
No. 12,594. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Susanna C. Allen, it is ordered this 30th day of December, A. D. 1904, that notice be and hereby is given to **Orren C. Allen, Warren, Pa.; George W. Allen, Denver, Colo.; Walter Allen, Erie, Pa.; Mary E. Bishop, Warren, Pa.; Ida M. Bowers, Jamestown, N. Y.,** and to all others concerned, to appear in said court on **Monday, the 6th day of February, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

Digitized by Google

Legal Notices.

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Chastain C. Meador,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of January, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of January, 1905. MARY L. SHIELDS, 908 13th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,571. Administration. 1-3t

Jos. R. Fague, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alice Porter,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of January, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of January, 1905. IRENE M. RODIER, 332 H st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,620. Administration. 1-3t

Malcolm Hufty, Solicitor

In the Supreme Court of the District of Columbia.
In re Change of Name of Frederick William Keyworth. Equity, No. 25,115.

On consideration of the petition of Frederick William Keyworth, filed herein, praying that his name be changed to Frederick Keyworth Barbour, it is this 5th day of January, A. D. 1905, ordered that a hearing be had on the said matter on the **30th day of January, A. D. 1905.** Provided a copy of this order be published once a week for three successive weeks before said day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 1-3t

Thos. G. Miller, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Abraham Alstead,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of December, A. D. 1905;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of December, 1904. GEORGE B. ALSTEAD, 1440 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,612. Administration. 1-3t

William L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Johan C. Glück, Deceased.
No. 12,598. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Eva Margaretha Glück, it is ordered this 5th day of January, A. D. 1905, that notice be and hereby is given to **Carrie L. Fadely, Lantz Mills, Virginia, Ed. S. Glück, Baltimore, Md., and Joseph Weyrich, Baltimore, Md.,** and to all others concerned, to appear in said court on **Tuesday, the 7th day of February, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

Legal Notices.

M. A. Mess, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha Koehler,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **3d day of January, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of January, 1905. MICHAEL A. MESS, 1301 First st. N. W.; MATTHIAS NOLTE, 309 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,610. Administration. 1-3t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Patrick Brennan,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of December, A. D. 1905;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of December, 1904. CATHARINE J. BRENNAN, 1638 14th st. N. W. Attest JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,547. Admr. 1-3t

J. H. Lichliter, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frederick C. Grose,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of September, A. D. 1905;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of January, 1905. WASHINGTON TOPHAM, 1219 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,405. Administration. 1-3t

Eugene A. Jones, Solicitor

In the Supreme Court of the District of Columbia.

Frank T. Rawlings v. John A. Harrison, Marietta F. Harrison, Jesse B. Harrison, Susan L. Harrison, Emma E. Harrison, Sarah H. Harrison, Kate M. Harrison. Equity, No. 25,084.

ORDER OF PUBLICATION.

The object of this suit is to quiet the title to all of lots numbered from 56 to 76, both inclusive, in block 11 of Hall and Holden's subdivision of Cottage Hill, District of Columbia, as the same appears of record in the office of the surveyor of the District of Columbia in County Book Levy Court No. 2, at page 74. On motion of the complainant, and it appearing to the court that a summons has been issued for each of the defendants and returned not to be found, and the non-residence of the defendants proved to the satisfaction of the court, it is this 4th day of January, A. D. 1905, ordered that the defendants, and each of them, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three weeks before said return day in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 1-3t

OFFICIAL edition, United States Bankruptcy Law of July 1, 1898, and Amendments of February 5, 1903, with marginal notes and full Index. General Orders and Forms adopted by the United States Supreme Court, November 28, 1898. Price, paper, 50c; cloth, $1, delivered by mail. The only complete edition. THE LAW REPORTER CO., Printers, Stationers, and wholesale and retail dealers in Bankruptcy Supplies. Washington, D. C. M. W. Moore, Manager. Phone East 191.

Digitized by Google

Legal Notices.

Lambert & Baker, John W. Patterson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William Thomas Solomon, Deceased.
No. 12,008. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by William H. Underdue, it is ordered this 22d day of December, A. D. 1904, that notice be and hereby is given to **Josephine Solomon and Nicodemus Solomon**, and to all others concerned, to appear in said court, on **Friday, the 10th day of February, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

SECOND INSERTION.

W. S. Duvall, Solicitor

In the Supreme Court of the District of Columbia.
In re Frank Charles Guschewsky, Petitioner.
In Equity No. —.

In consideration of the petition of Frank Charles Guschewsky, herein filed, praying for change of name to Frank Charles Gorham, it is, by the court, this 23d day of December, 1904, on motion duly made by W. S. Duvall, Esq., the petitioner's solicitor, ordered that a hearing be had of the said matter on the **20th day of January, 1905.** Provided a copy of this order be published once a week for three consecutive weeks in The Washington Post and Washington Law Reporter prior to the said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 53-3t

Walter C. Balderston, Attorney

In Justice's Court of the District of Columbia,
Sub-district No. 1.
Harry Lamson v. George R. Devitt.
At Law. No. 3985.

The object of this suit is to recover a debt of twenty-five dollars and interest, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 28th day of December, A. D. 1904, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the plaintiff should not have judgment as above set forth. CHARLES S. BUNDY, Justice of the Peace in and for Sub-district No. 1 of the District of Columbia. 53-3t

J. H. McGowan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Samuel Lee, Deceased.
No. 10,611. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, by the petition of J. H. McGowan, attorney of record in the above entitled matter, that the appointment of Harry A. Lee as administrator of the estate of Samuel Lee, deceased, be duly revoked, and that the Washington Loan & Trust Company, of Washington, D. C., be appointed as such administrator, sufficient cause appearing therefor, it is ordered this 30th day of December A. D. 1904, that notice be, and hereby is, given to said **Harry A. Lee**, administrator of the estate of Samuel Lee, deceased, to appear in said court on the **20th day of January, A. D. 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided, that this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, and that one copy of this publication be mailed to the last known postoffice address of said Harry A. Lee, and that proof be made of such mailing at least ten days before said return day. JOB BARNARD, Justice. A true copy. Test: James Tanner, Register of Wills. 53-3t

Legal Notices.

Rossa F. Downing, Solicitor

In the Supreme Court of the District of Columbia.
Julia Gibbons et al. v. Marianna Stanton et al.
Equity No. 24,920.

The object of this suit is for a partition of all of the real estate of which Thomas J. Stanton is seized as trustee, under the will of John Gibbons, deceased, and for an accounting by said Thomas J. Stanton, trustee. On motion of the complainants, it is this 23d day of December, 1904, ordered that the defendants, **Margaret J. Reilly, Ella M. Leahy, William M. Gibbons, and Emma Gibbons**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks before the end of said forty days in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 53-3t

Edward H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted auxiliary and ancillary letters testamentary on the estate of **Jeannie K. Stickney**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 16th day of January, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of December, 1904. ALBERT F. FOX, by Edward H. Thomas, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,752. Admn. 53-3t

Wm. W. Boarman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Franklin H. Mackey, Deceased.
No. 12,585. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Horace S. Cummings, executor, it is ordered this 23d day of December, A. D. 1904, that notice be and hereby is given to **Victor H. Mackey, Sarah P. Royston, and Edwin McGregor Mackey**, and to all others concerned, to appear in said court on **Monday, the 30th day of January, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 53-3t

THIRD INSERTION.

Chas. F. Diggs, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Henry Arkin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of December, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of December, 1904. BARNETT COHEN, 1145 16th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,590. Administration. 53-3t

Digitized by Google

Legal Notices.

Jos. T. Sherier and Jos. W. Cox, Solicitors

In the Supreme Court of the District of Columbia.
David E. Tyrrell, Complainant, v. Mary A. Tyrrell and Louis C. Byram, Defendants.
In Equity, No. 25,010.

The object of this suit by the complainant is to obtain an absolute divorce from the defendant, Mary A. Tyrrell, on the ground of adultery. On motion of the complainant, by his attorneys, it is by the court this 7th day of December, A. D. 1904, ordered that the defendants, **Mary A. Tyrrell, alias Irene Ferguson, and Louis C. Byram**, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) consecutive weeks prior to said day in The Washington Law Reporter and Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 52-3t

---

William L. Pollard, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testementary on the estate of **Annie Cabell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of December, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of December, 1904. FREDERIC W. FAIRFIELD, 2463 6th st. N. W.; THOMAS W. WEST, 2221 L st. N. W. Attest: WILLIAM C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,560. Administration. 52-3t

---

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
In Re Estate of Mary Ball Renner.
Lunacy Docket No. 593.

The Washington Loan and Trust Company, committee having reported to the court the sale of a certain piece of property belonging to the said **Mary Ball Renner**, said piece of property being the south twenty (20) feet in lot five (5), square five hundred twenty-five (525), known as premises number 1127 4th street northwest, in the city of Washington, District of Columbia, on the 9th day of December, 1904, to Charles A. Sickel, for the sum of thirty-two hundred fifty ($3,250) dollars; it is ordered and decreed that the said sale be, and it is this 21st day of December, 1904, ratified and confirmed, unless cause to the contrary be shown on or before the **21st day of January, 1905**. Provided that a copy of this order be published once a week for three (3) successive weeks before said last mentioned date in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 52-3t

---

Berry & Minor and Hugh B. Rowland, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Ritchie Stone**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of December, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1904. BENJAMIN S. MINOR, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,598. Administration. 52-3t

---

The Law Reporter Company. Superior Printers, Bookbinders, Stationers, Engravers, Legal Blank Makers. Publishers of "The Washington Law Reporter." Mark W. Moore, General Manager, Telephone Main 828, 518-520 Fifth Street, N. W., Washington., D. C.

Legal Notices.

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Nora Flannery, Deceased.
No. 12,559. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Michael A. Lynch, the executor named in said last will and testament, it is ordered, this 20th day of December, A. D. 1904, that notice be and hereby is given to **Michael Fitzgibbon, of the County Limerick, Ireland; James Fitzgibbon, of the County Limerick, Ireland; Maurice Fitzgibbon, of the County Limerick, Ireland, and Margaret Fitzgibbon Crimmins, of New Castle West, County Limerick, Ireland, and also to the unknown heirs at law and next of kin, if any, of said decedent**, and to all others concerned, to appear in said court on **Monday, the 23d day of January, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-3t

---

FOURTH INSERTION.

Frank A. Jones and C. Clinton James, Solicitors

In the Supreme Court of the District of Columbia.
Thomas Morrissey et al. v. Howard H. Young et al.
No. 25,043. Equity Docket 56.

The object of this suit is to establish the title of the complainants against the defendants by adverse possession to original lot numbered fourteen (14) in square numbered eight hundred and fifty-eight (858), Washington, D. C. On motion of the complainants, it is this 12th day of December, A. D. 1904, ordered that the defendants, **Howard H. Young, Victoria P. Terrett, Gibson A. Terrett, Amelia E. Bailey, Oscar W. Bailey, Minnie Stewart, Thomas Stewart, Fannie Kelly, Daniel K. Lee, Willie Belle Lee, Elizabeth F. Lee, Harry P. Lee, Francis E. Perry, John Perry, Maria Bryan, Lewis Bailey, Blanche Bailey, Susan Jones, and Oscar Jones**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or alienees of **Sarah V. Lee**, of **Henry Lee**, of **Wanita Jones**, of **Mary L. Bailey**, of **Notley Young**, and of **William C. Donelan**, cause their appearance to be entered herein on or before the first rule day, occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-4t

---

FIFTH INSERTION.

Leon Tobriner and B. N. Graham, Solicitors

In the Supreme Court of the District of Columbia.
The Adas Israel Hebrew Congregation v. The Unknown Heirs, Devisees, and Alienees of Catherine Haines, sometimes called Catherine Haynes.
No. 24,955. Equity.

The object of this suit is to perfect complainant's title to part of lot six (6) in square four hundred and eighty-seven (487), being the north twenty-five (25) feet by full depth thereof. On motion of the complainant, it is this 5th day of November, A. D. 1904, ordered that the defendants, the unknown heirs, devisees, and alienees of Catherine Haines, sometimes called Catherine Haynes, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months prior to said return day in The Washington Law Reporter and The Evening Star. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk.
nov 11-18-dec 9-16-jan 6-13

Digitized by Google

RESTAURANTS.

HARVEY'S

THE CAPITAL'S LEADING RESTAURANT
All the delicacies known to gastronomy, carefully selected by the proprietor, and prepared by a skilled corps of competent cooks. The specialties of this house are: **Oysters, Diamond Back Terrapin, Canvas Back Duck,** with every variety of Sea Food.

HARVEY The Originator of Steamed Oysters

Cor. Penna. Ave. and Eleventh Street. 1649

Established 1840 **1234 Pennsylvania Avenue.**

Hancock's

THE OLD CURIOSITY SHOP
Hancock's Mixed Drinks are Famous. 1650 **Restaurant**

O—Y—S—T—E—R—S

IN EVERY STYLE

Box and Family Trade Solicited.
Open Sunday from 12 to 12.
Steamed Oysters a Specialty. 1650

COSTELLO BROS.
Sixth and G Streets, Northwest.

HUTTERLY'S Phone 3296.
NEW JEWELRY STORE
Good Work and Low Prices Reign Supreme
ANDREW O. HUTTERLY
Formerly 632 G St. N.W. Jeweler and Optician
1646 732 Seventh Street, N. W.

HOTELS.

The Most Centrally Located Hotel in the City
PHONE MAIN 2828
HOTEL MONTROSE
EUROPEAN PLAN
Corner 14th and H Sreets N. W.
Private Dinner Parties a Specialty. Ladies' and Gentlemen's Café
1650 **CONRAD F. GRIEB, Proprietor**

HOTEL ENGEL AND RESTAURANT

New Jersey Ave. and C St., Opposite B. & O. Depot.
Imported Beers on Draught.
Business Men's Lunch, from 12 to 2 o'clock, 25c.
W. A. ENGEL, Propr. 1651

HOTELS.

THE MERCHANTS HOTEL

485 PENNSYLVANIA AVENUE
One Block from Pa. R. R. Depot
Convenient to all Depots and Street Car Lines
THE MERCHANTS HOTEL CO., Proprietors
Henry F. Thomas, Manager.
1600 Finest Bowling Alleys South of New York.

HOTEL TRAYMORE, ATLANTIC CITY, N. J.
Remains open throughout the year; every known comfort and convenience; golf privileges; running water in bed rooms. TRAYMORE HOTEL CO.
tf D. S. WHITE, President.

THE PEACOCK INN, ON BISCAYNE BAY, COCOANUT GROVE, FLA.
Most southerly hotel on mainland of U. S. Fishing, hunting, boating, bathing. Booklet.
tf G. F. SCHNEIDER & SON.

MONEY TO LOAN.

LOANS ON STOCKS, BONDS, REAL ESTATE trusts, Building and Loan Association shares, syndicate certificates, warehouse receipts, **Life Ins. Policies,** etc.; reasonable rates; square dealings. 40-42 Metzerott Building, 1110 F street N. W. Phone 517. **C. A. BAKER,** Broker and Fiscal Agent. 1646

MONEY TO LOAN AT LOWEST RATES OF INterest on real estate in District of Columbia.
1646 WALTER H. ACKER, 1420 F street N. W.

MONEY TO LOAN ON D. C. REAL ESTATE; LOWest rates of interest; payments on principal in amounts of $100 or more received at any interest period. THE F. H. SMITH CO, Bond Bldg., 1408 N. Y. Ave.
1646

WE HAVE MONEY TO LOAN ON D. C. REAL ESTATE security at 4½ and 5 per cent interest. Monthly payment loans at 5 per cent interest. Prompt replies and smallest possible expense. MOORE & HILL, (Inc.), 717 14th street N. W. 1646

PUBLIC ACCOUNTANTS.

J. E. BATES
Public Accountant and Auditor

Washington Loan and Trust Building,
WASHINGTON, D. C.

Mercantile, Corporation, and Legal Accounting of every description.

Seventeen Years' Experience.
Telephone Main 972. 1646

The American Audit Company

PUBLIC ACCOUNTANTS.
Home Office, 100 Broadway, New York City.
F. W. LAFRENTZ, C. P. A., Pres.
G. E. MANWARING, V.-Pres.
THEO. COCHEU, Jr., C. P. A., Secy. and Treas.
Examines the affairs of and makes report upon the financial condition of private and public concerns; devises and installs modern and economic systems of bookkeeping and accounting. Consultation solicited.
OTTO LUEBKERT, Resident Manager
308 Colorado Building, WASHINGTON, D. C.
1646 Telephone Main 2705.

OLD GOLD AND SILVER

Watches, Diamonds, Jewelry, and Antiques of every description bought for the highest CASH prices.
1646 J. SELINGER, 816 F St. N. W.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 8

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.

Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - FEBRUARY 24, 1905

CONTENTS.

Editorial 113
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Joseph J. Darlington et al., executors, etc., appellants, v. Erle H. Turner et al. 114
Legal Notices 122

License Tax—Contractors.

The decision of the Court of Appeals in the case of District of Columbia v. Chapman, announced during the present week, settles an important question as to the construction of a provision of the personal tax law of this District. The appellee is a wholesale and retail dealer in wood and coal, and as such for some years has furnished quantities of wood and coal under contracts with the United States and the District of Columbia. In June, 1903, a demand was made upon him for payment of a license tax as a contractor, and on his refusal he was charged in the Police Court with doing business without a license. To avoid the publicity and notoriety of a trial in the Police Court, he paid the tax under protest; and on his demand for a return of the money being refused brought suit to recover the amount. The case was heard in the Supreme Court of the District, without a jury, and Mr. Justice Barnard held that Chapman was not liable to the tax, and sustained his right to recover the money. His ruling is affirmed by the Court of Appeals, in an opinion by Mr. Justice Shepard, in which it is held that the license tax imposed by the statute upon "building and other contractors" could not be enforced against the appellee, as a wholesale dealer in wood and coal, merely because he had contracts to furnish the same in large quantities to the general and municipal governments. The term "other contractors," used in the act, is characterized as "too vague and uncertain."

Homicide—Presumption of Sanity.

In State v. Austin, decided by the Supreme Court of Ohio in January, 1905, and reported in 71 Ohio State Reports, the court states the rule to be that, in a homicide case, the presumption of sanity serves the State as the full equivalent of express proof until such time as it shall appear by a preponderance of the evidence that the defendant was insane at the time of the commission of the crime. In that case it appeared that the defendant, prior to the homicide, had twice been adjudged insane and committed to an asylum, but was discharged therefrom the last time nearly two years before the commission of the crime. Counsel for defendant requested the trial court to instruct the jury that "proof of prior insanity throws upon the State the burden of proving the crime perpetrated during a lucid interval; it defeats the legal presumption of sanity and creates a legal presumption of continued lunacy." In holding that such instruction was properly refused, the Supreme Court said:

The particular vice of this instruction is that it states the rule too broadly. It is doubtless true that insanity is often chronic and permanent; for instance, from senile dementia and congenital idiocy there can be as a rule no recovery, and where insanity in such form is once proven to exist its continuance may be inferred or presumed, such inference or presumption, however, being one of fact and not of law. There are, perhaps, but few other forms of insanity of which recovery may not be predicated, at least as a contingency, and as to these no presumption whatever is indulged or recognized that they are continuing in their nature. Underhill Cr. Ev., sec. 156.

Therefore, the burden being upon the defendant to show that he was insane at the time of the commission of the particular act charged, proof of mere temporary or recurrent insanity, such as is shown in this case, at a time prior thereto is clearly not sufficient to rebut or overcome the legal presumption of his sanity and to impose upon the State the burden of proving that at the time the act was committed the defendant was then sane. The burden of proof does not shift, but all along it rests with the defendant, and if in any case he would overcome the legal presumption of his sanity and would exonerate himself from liability he must show by a preponderance of the evidence that at the time of the commission of the alleged criminal act he was then so far mentally deranged or unsound as not to be answerable or accountable for his act. While proof of prior insanity is competent, whether a mental condition shown to exist has continued down to the time of the commission of the alleged criminal act, is solely a question of fact to be determined by the jury. And the defendant in a criminal case who sets up insanity as a defense does not relieve himself from showing his insanity at the very time of the commission of the criminal act by proof merely that he was insane at an earlier time.

Digitized by Google

Court of Appeals, in an opinion by Mr. Justice Morris, reported in 31 Wash. Law Rep. 322; and the Supreme Court holds that the case was rightly decided.

THE Supreme Court of the United States, in an opinion by Mr. Justice McKenna, has reversed the decree of the Court of Appeals of this District in the case of McCaffrey v. Manogue, reported in 31 Wash. Law Rep. 454. The suit involved the construction of the will of Hugh McCaffrey, deceased. The trial court and the Court of Appeals each held that the provisions in question gave to the several devisees life estates only in the properties devised to them. The Supreme Court, however, holds that the devisees carried the fee in the properties to the several devisees, and directs the entry of a decree in accordance with that holding.

BANKS AND BANKING—Power to Purchase Stock of Other Bank.—A national bank has no power to invest its surplus funds in the stock of another national bank and can not be assessed thereon as a stockholder, although it actually made the purchase, and held and received dividends on the stock.—Shaw v. National German-American Bank, U. S. C. C. of App., Eighth Circuit, 132 Fed. Rep. 658.

BONDS—Action on Bond, Pleading.—In an action on a bond, a defense that it was extorted in proceedings which were void for want of jurisdiction is the subject of a plea in bar, and not of a plea to the jurisdiction.—Birch v. King, N. J., 59 Atl. Rep. 11.

CARRIERS—Brakeman, Choice of Dangerous Place.—A brakeman held not entitled to recover for injuries received while attempting to jump from the roof of one car to that of another, which was of peculiar construction.—Benson v. New York, N. H. & H. R. Co., R. I., 59 Atl. Rep. 79.

CARRIERS—Injury to Passenger at Station.—A railroad company is not liable to one of its passengers for an injury received, while waiting for his train, by the carelessness of an employee of another company using the same station.—Miller v. West Jersey & S. R. Co., N. J., 59 Atl. Rep. 13.

CARRIERS—Care Required.—A person maintaining an elevator in a store held bound to exercise the highest degree of care usually exercised by prudent persons in the same business in its management.—H. B. Phillips Co. v. Pruitt, Ky., 82 S. W. Rep. 628.

Court of Appeals of the District of Columbia.

LUSANAH A. CRANDELL, APPELLANT,
v.
CONSTANZE CLASSEN.

MARRIED WOMEN; PURCHASE OF STOCK; INSTRUCTIONS.

Plaintiff purchased thirty shares of stock from defendant, a portion of it being issued in her name and the residue in the name of her daughter; and defendant agreed if the purchase proved unsatisfactory to redeem the stock at the price paid. Upon her refusal to redeem, plaintiff sued for the purchase price. Defendant prayed the court to instruct the jury that no recovery could be had for the stock issued in the name of the daughter, apparently upon the contention that plaintiff was a married woman at the time of the purchase, and that in order for property purchased with her own money to be her separate estate the investment must be in her own name. *Held* that without reference to the question of the correctness of defendant's contention, the prayer was properly refused for the reason that the evidence failed to show that plaintiff was a married woman at the time of the purchase of the stock.

No. 1432. Decided February 7, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,146, entered upon a verdict for plaintiff, in an action to recover the amount paid for certain shares of stock. Affirmed.

Mr. Victor H. Wallace for the appellant.

Mr. Tracy L. Jeffords for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is from a judgment entered upon the verdict of a jury in favor of the appellee, the plaintiff below, for $400, the full amount claimed, less $30 received by the appellee from one Browne from funds placed in his hands by the appellant, with interest from January 1, 1902.

The material facts of the case are, that in June, 1901, the appellee purchased of appellant thirty shares of the stock of the corporation and paid her own money for the same. Eight shares were issued in her name and twenty-two shares in the name of Wanda Meta Steffens, her daughter. The certificates of stock representing the purchase were received by the appellee and remained in her possession until she returned them to the appellant on December 28, 1901. The purchase is alleged to have been made upon an agreement that the appellant would redeem the stock at the price paid for it by appellee should the purchase at any time prove unsatisfactory to her. The appellant failed to repay the amount paid by appellee for the stock and this suit thereafter was brought. The appellant denied making any such agreement as was claimed by the appellee, and testified that the stock was brought to her for the purpose of having it redeemed by one Browne. The testimony upon this point is conflicting; but, the case having been submitted to the jury and the jury having found for the appellee, we can only consider the questions of law presented by the assignment of error.

1. The first alleged error is based upon the refusal of the court to instruct the jury that if it should find from the evidence in the case that the appellant promised the appellee as a condition of the purchase of the stock that the appellant would redeem the same at any time

Digitized by Google

should it prove unsatisfactory to her, and that if the appellee, relying upon this promise, did thereafter purchase the stock, nevertheless the appellee was not entitled to recover the amount paid for the stock issued in the name of her daughter, Wanda Meta Steffens.

This request does not state the reasons why a recovery for the stock so issued could not be had, but we infer that it is based upon the contention that appellant was a married woman at the time of the purchase of the stock, and that therefore, under the Married Woman's Act of June 1, 1896, in order to hold as a part of her separate estate any property purchased with her own money, it must be invested in her own name.

As we view it, it is unnecessary to pass upon the correctness of appellant's contention, for the reason that there is nothing in the record which shows that the plaintiff was a married woman at the time when she purchased the stock. It is true that the appellee testified that she was married, but it does not follow from that that she was a married woman at the time when she purchased the stock. We are not permitted to infer anything. If the appellant desired to raise the point, the fact upon which it is based should have been proved and not left to inference.

The bill of exceptions does not set forth any evidence upon which the appellant was entitled to ask the court to instruct the jury as set forth, and, therefore, the court, in denying the prayer and in refusing to so instruct the jury, was not in error, and the exception was not well taken.

2. The second alleged error is based upon the admission in evidence of a certain letter, under date of June 1, 1901, written by appellant to the appellee.

The letter reads as follows:

"June 1st, 1901.

"610 H street N. W., Washington, D. C.

"MY DEAR MRS. CLASSEN: For your $320 which I sent up to Mr. Browne I received the inclosed stock. If at any time it is not satisfactory, bring or send it to me and I will redeem it at the price you paid. Yesterday I received a note from 'headquarters' putting the price at $17.50. Today some has come in and you have the benefit. Let me hear from you and your daughter, to whom give my morning greetings. Send the address for forwarding your interest, due the first week in July next. With good wishes for your future and 'good luck' with your Kretol stock,

"Your friend, L. A. CRANDELL.

"I inclose the note I mentioned to you as putting the price $17.50. The portion I cut off was strictly private. You will know if it is correct."

Counsel for appellant insists that if the first assignment of error is well taken, the letter was inadmissible, as it related to the stock issued in the name of Wanda Meta Steffens, the purchase price of which stock could not be recovered in the present suit; and that it was inadmissible as to Mrs. Classen's stock because by its term the letter refers only to the stock issued in the name of Wanda Meta Steffens.

As we have overruled the first error assigned, appellant's contention that the letter is inadmissible can not be sustained, for the letter relates to the certificate for the twenty-two shares of stock which was purchased at the price of $15 per share, and it was clearly admissible to prove the promise of redemption, at least as to the twenty-two shares. Furthermore, it was admissible to show the price of that stock and the date of its delivery.

Neither of the assignments of error is well taken, and consequently there was no error in the court below.

It follows that the judgment of the trial court should be affirmed with costs, and it is so ordered.

PHILO J. LOCKWOOD, PLAINTIFF IN ERROR,

v.

THE DISTRICT OF COLUMBIA.

PERSONAL TAX LAW; CLAIM AGENTS; CONVICTION REVERSED.

1. Statutes imposing restrictions upon business or the common occupations of the people, or levying a tax upon them, are to be construed strictly.
2. The term "claim agents," as used in paragraph 46 of section 7 of the personal tax law of this District, approved July 1, 1902, imposing an annual tax of $25 upon persons engaging in business as such, is too uncertain and vague to be enforced.
3. A conviction of the plaintiff in error, an attorney at law engaged in the prosecution of claims before the Pension Bureau, under an information charging him with engaging in the business of a claim agent without license, reversed.

No. 1480. Decided February 7, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the appellant.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Philo J. Lockwood was convicted in the Police Court under an information charging him with engaging in the business of a claim agent without license, and has been allowed a writ of error.

It appears from the evidence that plaintiff in error is an attorney at law whose business has been for several years the prosecution of claims in the United States Pension Office, and that he has not paid the annual license fee of $25 demanded of him under the personal tax law for the District, approved July 1, 1902. The demand is based on paragraph 46 of section 7 of said act, and so much of the same as is pertinent reads as follows: "An annual license tax is hereby imposed upon the following classes of business, trades, and professions, namely: . . .; claim agents, twenty-five dollars;" . . . Paragraph 47 of the same act provides that any one violating any of the provisions of section 7 shall be punished by a fine of not more than $500 for each offense, and in default of payment by imprisonment not exceeding thirty days. The act contains no definition of the term claim agents, and the contention is that it is too uncertain and vague to be enforced.

In this we concur. We find no definition of the compound word claim-agent in any of the popular dictionaries, and the word as used by different persons might, in the unlimited dis-

Digitized by Google

cretion of the taxing officers, be given a very wide range of inclusion. Attorneys at law are not taxed as such, and yet one of these may be largely and even exclusively engaged in the prosecution of claims and demands before the courts, or in their adjustment generally. It would seem, as said by counsel for the plaintiff in error, that the various steam and street railway corporations operating in the District of Columbia have what are called claim agents who are engaged in the examination of claims against them as well as in their adjustment and settlement. One engaged in collecting rents for owners of property might also be deemed a claim agent in some sense of the term. And the same may be said of all persons acting for principals who may have claims for allowance, adjustment, or collection, whether in the executive departments of the Government or otherwise.

The established rule of the courts is that all statutes imposing restrictions upon business or the common occupations of the people, or levying a tax upon them are to be construed strictly.

As was said by Chief Justice Alvey in delivering the opinion of this court in Transportation Co. v. District of Columbia, 19 App. D. C. 462, 470: "All the authorities agree in maintaining that all charges upon the citizen must be imposed by clear and unambiguous language, because, as it is said, they operate as penalties. In a case of doubt that construction most beneficial to the citizen must be adopted." Here, as we have seen, the penalty for pursuing this occupation without the payment of a considerable license tax is a severe one, and it is eminently just, therefore, that the citizen should be reasonably well informed, by the language of the statute itself, of his obligation to pay money demanded of him, the failure to pay which, if he errs in its construction, may subject him to that penalty.

On behalf of the defendant in error, it is contended that the tax upon claim agents is intended to embrace those only whose business it is to prosecute claims before the executive departments of the Federal Government or the District of Columbia. In support of this construction of the meaning of the statute they have referred us to certain taxing acts of Congress and one of the former legislative assembly of the District, all of which were long ago repealed, either expressly or by implication. The two acts of Congress referred to impose a tax upon "claim agents for procuring patents" of $10, and that of the assembly taxes "claim agents" $15 per annum.

In the first two it is declared that: "Every person whose business it is to prosecute claims in any of the executive departments of the Federal Government, or to procure patents, shall be deemed a claim or patent agent, as the case may be." 12 Stat. 459; 13 Id. 254. In the act of assembly the definition is as follows: "Every person whose business it is to prosecute claims before the executive departments of the General Government or the District of Columbia shall be regarded as a claim agent."

In the first place, we fail to see how we can look to old and repealed statutes for the definition of an occupation named in the existing statute which omits altogether to define it. In the second place, if we were to do so, we should be compelled, under those first mentioned, to say that all patent solicitors, who are not now regarded as claim agents in any sense, are, nevertheless, taxable as such. If we look to the act of assembly we find that it differs from the acts of Congress in two material respects, in that it omits patent solicitors and adds to the definition of claim agents such persons as may prosecute claims before the executive departments of the District of Columbia also.

Reference to the several acts mentioned would tend to increase the uncertainty that now exists rather than to correct it. The defect of the present act is chargeable to the failure of its framers to follow the example set in the former legislature by giving a definite meaning, for the purposes of the statute, to general words used which have no fixed or reasonably certain popular signification.

The court erred in not rendering a judgment of acquittal, and the judgment must, therefore, be reversed with costs, and the cause remanded with directions to discharge the defendant. It is so ordered. Reversed.

ELIZABETH M. WILLIAMS, APPELLANT, v. BETTIE G. WILLIAMS.

ADMINISTRATION; APPOINTMENT OF WIDOW AND CHILD AS JOINT ADMINISTRATORS.

1. Under section 276, Code D. C., the Probate Court has discretion, as between a widow and a child, both qualified to act, to appoint either the one or the other as administrator of the estate of a decedent; and it is also competent for the court to appoint the widow and child as joint administrators, where they consent to such appointment; but a joint administration will not be forced upon a party entitled against his or her consent.
2. An order appointing a child as administrator of the estate of a decedent jointly with his widow and against her will reversed.

No. 1,500. Decided February 7, 1905.

APPEAL from an order of the Supreme Court of the District of Columbia, holding the Probate Court, Probate No. 12,166, appointing a person as coadministratrix of the estate of a decedent jointly with his widow. Reversed.

Mr. J. Altheus Johnson and *Mr. Burton T. Doyle* for the appellant.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This cause is here for the second time. It was formerly before us (32 Wash. Law Rep. p. 710) upon an appeal by this same appellant from an order of the Supreme Court of the District of Columbia, whereby another person was forced upon her against her will as coadministratrix of her deceased husband. That order was reversed, and the cause was remanded to the court below for further proceedings in accordance with the opinion then rendered by this court. In that opinion, which was pronounced by Mr. Chief Justice Alvey, it was held that a maternal grandmother of two minor children of the deceased could not be forced, upon the petition of the children by their next friend, as coadministratrix upon the widow of the deceased, who

Digitized by Google

was his second wife and the step-mother of the children, notwithstanding that the relations between the children and their step-mother did not appear to be friendly, and it was suggested that their interest in the estate, which consisted merely or mainly of a chose in action, might require protection against possible injurious action by their step mother as sole administratrix. At the conclusion of the opinion, however, this clause appeared:

"It has been suggested in argument that the eldest child of the deceased has recently come of age; and if that be so, and the child be otherwise qualified, the court may, in the exercise of its discretion, under section 276 of the Code, appoint that child as coadministrator with the widow. We must, however, reverse the order appealed from and remand the cause, that action may be had in the court below in accordance with the foregoing opinion."

When, in pursuance of our decision, the mandate of this court went down, the court below, acting upon what was assumed to be the suggestion of this court in this last clause of the opinion, appointed Bettie G. Williams, the appellee, the oldest child referred to of the deceased, as coadministratrix of the estate of the deceased with the widow, over the objection of the latter, and the latter has again appealed to this court from the order of appointment.

We are constrained to hold that the court below has misconstrued the paragraph in the former opinion of this court which has been relied on in support of the action on account of which the present appeal has been taken. We did not mean in that paragraph to hold that the court below might appoint the widow and the oldest child of the deceased, the latter being of age, to act as joint-administrator of the estate of the deceased against the will of either of them. The paragraph was merely the suggestion of counsel, upon which this court declined to act, inasmuch as the case was not before it for action.

Section 276 of the Code, which is, with some slight variation, the same as section 16 of subchapter 5 of chapter 101 of the Maryland Testamentary Act of 1798, provides that "if the intestate leave a widow and a child or children, administration, subject to the discretion of the court, shall be granted either to the widow or child or one or more of the children qualified to act as administrator." As between a widow and a child, both qualified to act, this section undoubtedly leaves it to the discretion of the probate court whether it will appoint the one or the other as administrator of the estate. But it must appoint either one or the other, before it can reach out to any other class, inasmuch as the law specifically provides that the classes are to be preferred in the order in which they are enumerated, unless, of course, there is good cause for setting them aside. Undoubtedly, also, under this section 276, although the provision is in the disjunctive that administration may be granted, in the discretion of the court, either to the widow or to a child, or to two or more children qualified to act, a widow and child, or a widow and two or more children, may be appointed as joint administrators, and it is competent for the probate court to make such appointment, for, as between the widow and child, both competent to act, the law does not seem to recognize any preference or priority.

But, in so far as this court entertained this suggestion at the last hearing of the case, it did not mean to intimate that joint administration could be forced upon unwilling parties. It meant to say that the widow and the child, or the widow and two or more children, if they agreed, could be selected by the court to take joint administration of the estate. It did not mean to say that they could be compelled to act together, if either one was unwilling. Joint administration with joint liability, where the parties, from the very beginning, proclaim themselves as hostile, or at least as adverse to each other, would be an anomaly in the law and likely to lead to worse consequences than would the commission of administration to one of the hostile parties alone. What the Supreme Court of the State of Pennsylvania said in the case of Brubaker's appeal, 98 Pa. St. 21, is very pertinent here. It said:

"The prevailing rule is not to enforce a joint administration upon unwilling parties. It is very evident that the court (the Orphans' Court) recognized the impropriety of attempting to create a joint administration against the protest of one of the parties thereto. The nature of the office forbids it. Joint administration necessarily involves joint liability, and no one can be compelled to assume such responsibility. Due regard to individual rights, as well as to the interests of the estate, require that administration should not be committed to two or more persons, unless they mutually agree to accept the trust."

And it was said in a New York case, Peters v. Public Administrator, 1 Bradf. 200, after a full consideration of all the English cases that had any bearing on the subject, that "such a thing was never heard of as the court forcing upon a party entitled a joint administration against his consent."

The hostility, or antagonism, or whatever it may be, between the widow and the children in this case, is greatly to be regretted; but it does not appear to us that it will improve things to place them in a position wherein they should consult freely with each other, if they would perform their duty, and yet wherein, on account of their antagonism, they would find it impossible, perhaps, to consult with each other.

We are constrained to hold that it was error in the court below to appoint the appellee, Bettie G. Williams, as joint administratrix with the widow of the deceased, Elizabeth M. Williams. The order for such appointment must, therefore, be reversed, with costs; and the cause will be remanded to the Supreme Court of the District, with directions to vacate such order, and for such further and other proceedings therein as may be proper according to law.

And it is so ordered. Reversed.

ADVERSE POSSESSION—Subsequent Survey.—Where plaintiff had acquired title by adverse possession, a subsequent survey to find the south line of the land with plaintiff's consent could not prejudice such title.—Fatic v. Myer, Ind., 72 N. E. Rep. 142.

Digitized by Google

United States Supreme Court.

ANDREW C. KEELY, TRUSTEE, ET AL., PLAINTIFFS IN ERROR, v. JOSEPH H. MOORE ET AL.

WILLS—ATTESTATION—TESTAMENTARY CAPACITY—EVIDENCE—INSTRUCTIONS.

1. The wholly unofficial certificate of a vice-consul, appearing at the foot of a will executed abroad, if otherwise sufficient as an attestation, may be treated as such by disregarding the superfluous words, "Vice-Consul, United States of America," appended to his signature.
2. An application for the admission of a testator to an insane asylum, and the certificate of two physicians, upon which the commitment was made, are inadmissible in evidence on the issue of his testamentary capacity, not only because they were unsworn testimony, but because they were given in a different proceeding and upon a different issue.
3. The issue of the testamentary capacity of a person who had once been in sane was properly submitted to the jury by instructions that, if they found his insanity to be permanent in its nature and character, the presumption was that it would continue, and that the burden was upon the defendant to satisfy the jury, by a preponderance of testimony, that he was, at the time of executing the will, of sound mind.—Advance Sheets, U. S. S. C., page 169.

No. 55.

Argued November 8, 9, 1904. Decided December 19, 1904.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of that District, entered upon a verdict for defendants in an action of ejectment. Affirmed.

See same case below. 31 Wash. Law Rep. 339.

Statement by Mr. Justice BROWN:

This was an action of ejectment brought in the Supreme Court of the District by grantees of the heirs at law of William Thomson against Joseph H. Moore and the firm of Thomas J. Fisher & Company, agents of Mary Cecilia and Georgiana Hawkes Thomson, of the county of Kent, England, devisees under the will of William Thomson, to recover possession of an undivided ninety-one one-hundredths of certain real estate in the city of Washington. Upon the trial it was admitted that William Thomson died in Southampton, England, in 1887, seised of the lot in question; that he was born in, and was a citizen of the United States, leaving no issue or descendants. Plaintiffs had acquired the title of the heirs at law, and the defendants were in possession of the lot as life tenants under his alleged will.

The validity of the will and the due execution thereof were contested by the plaintiffs for reasons hereinafter indicated in the opinion. The trial resulted in a verdict for the defendants, upon which judgment was entered, and affirmed by the court of appeals. 31 Wash. Law Rep. 339.

Mr. C. C. Cole, *Mr. Hugh T. Taggart*, and *Mr. Leo Simmons* for plaintiff in error.

Mr. D. W. Baker and *Mr. Wilton J. Lambert* for defendant in error.

Mr. Justice BROWN delivered the opinion of the Court:

The validity of the will was attacked upon three grounds: 1st, that it has not the requisite number of witnesses to pass real estate in this District; 2d, that the testator was of unsound mind; 3d, that undue influence had been exercised by one of the designated executors, and others.

Thomson was a resident of Washington but, at the time of and for some years prior to his death, was the American consul at Southampton, England. One John H. Cooksey, a resident merchant at Southampton, was his vice-consul. The will was prepared by Walter R. Lomer, a resident solicitor, and was executed at his office February 24, 1866. By this will he devised the property in controversy to the appellees Mary Cecelia Thomson and Georgiana Hawkes Thomson, his cousins, of Kent County, England, jointly for their joint lives, and to the survivor of them, with remainder to Mary Cunningham Roberts, of London, for life, and remainder in fee to her only son. The will, which was executed in duplicate, was written upon two sheets of paper, to each of which the testator affixed his name. It was witnessed in the usual form by Lomer and by one Linthorne, a clerk in his office, who attached their signatures in the presence of and at the request of the testator, and in the presence of each other. On the day after the execution of the will Thomson again went to the office of his solicitor, Lomer, who wrote a certificate of acknowledgment in the margin of the second and last page of the will, which was signed by Cooksey, the vice-consul.

The original will, being of record in the Probate and Admiralty Division of the High Court of Justice in London, could not be produced, but was proved by a certificate and examined copy. The attestation clause and the certificate were as follows:

Signed and acknowledged by the said William Thomson, the testator, as and for his last will and testament in the presence of us, both being present at the same time, who at his request in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

WALTER R. LOMER,
Solicitor, Southampton, Eng.
R. ROUPE LINTHORNE,
His Articled Clerk.

I hereby certify that William Thomson, consul at Southampton for the United States of America, attended before me this 25th day of February, 1886, and acknowledged the foregoing paper-writing contained in two sheets of paper as his last will and testament and that the signature "Wm. Thomson" at the foot thereof is in the proper handwriting of the said William Thomson.

[Seal U. S. Consul.] JOHN H. COOKSEY,
Vice-Consul United States of America.

The execution of the will was proved by the two subscribing witnesses, Lomer and Linthorne, and the certificate by proof of the death of Cooksey, and the genuineness of his signature. This was proper. Clarke v. Courtney, 5 Pet. 319, 8 L. ed. 140; Stebbins v. Duncan, 108 U. S. 32, 27 L. ed. 641, 2 Sup. Ct. Rep. 313. At this time there was in force in this District the 5th section of the act of 29 Charles II., chapter 3, which had been adopted in Maryland in 1798, and carried into this District as section 4, chapter 70, of the Compiled Statutes of 1894. It pro-

Digitized by Google

vided as follows: "All devises and bequests of any lands or tenements, devisable by law, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void and of none effect."

The object of the certificate in question that Thomson took the will away with him is not entirely clear, though from the fact after its execution, and stated that he would attend before the consul general at London and obtain the requisite certificate, it would seem that he thought the certificate was necessary to the proof of the will in another country. He did not go to London, however, but called again at Mr. Lomer's office, with the request that he prepare the requisite certificate, which he afterwards procured Mr. Cooksey to sign. The certificate was not offered as proof that the will was a copy of the original, since it was annexed to the original, and we can consider it only as proof as to what it contains. It certifies, in substance, that the testator attended before Cooksey upon the day following the date of the will, acknowledged it to be his last will and testament, and that the signature is genuine. Whether he intended to certify that Thomson acknowledged his signature to be genuine, or that he, Cooksey, certified that it was genuine, is somewhat uncertain; but if the words "Vice-Consul of the United States of America," which are merely superfluous, were omitted, there would be no failure to comply with the statute, unless in the omission to certify that Cooksey, the certifying officer, "attested and subscribed in the presence of the said devisor." But as it appears that Thomson, not knowing when he would be in London, took the certificate to the vice-consul, and that the latter signed it, the jury might properly draw the conclusion that it was signed in the testator's presence. This would be the usual course of business, and the presumption is that Cooksey conformed to it and to his duty as a certifying officer.

The certificate was probably prepared under the belief that wills, like deeds, made in a foreign country, must be executed and acknowledged before some foreign official, or "before any (some) secretary of legation or consular officer of the United States" (Rev. Stat., sec. 1750; U. S. Comp. Stat., 1901, p. 1196; D.C. Comp. Stat., c. 58, sec. 6); but as such certificate was unofficial, and contributes nothing, as such, to the validity of the will, it can only be looked upon as the affirmation of an ordinary witness to the facts therein stated. No particular form of attestation was necessary, as appears to be the case in England and in several of the United States; and if the certificate of Cooksey had been written at the foot of the will and signed by himself and by the two witnesses, Lomer and Linthorne, it would have been a sufficient attestation. How, then, can it be regarded as insufficient when an attestation in one form is signed by two witnesses and an attestation in another form by a third? Bearing in mind that the certificate, if given any force at all, must be considered an attestation, we do not think that the fact that it may have been written and signed under a mistaken impression as to its necessity and purpose vitiates it as an attestation. What use was intended to be made of it is immaterial, if it were useless for any purpose as an official certificate. The facts certified are appropriate to the attestation of the instrument, and, if true, we see no reason for holding it to be invalid as an attestation because it was signed under the impression that it was necessary for some possible purpose as a certificate.

The case of Adams v. Norris, 23 How. 353, 16 L. ed. 539, is much in point. This was an action of ejectment for a parcel of land in California. Plaintiffs claimed through the heirs at law of one Grimes, defendants through the devisees in his will. The law required three witnesses to the validity of the will. Two of the witnesses signed in the usual manner, but above their signatures and beneath that of the testator was written: "Before me, in the absence of the two alcaldes, Roberto T. Ridley, Sindico." The sindico was counted among the witnesses, the court saying: "We comprise among the witnesses to the will, Ridley, the sindico. It does not appear that a sindico was charged with any function in the preparation or execution of testaments by the law or custom of California. Nor is it clear that the sindico in the present instance expected to give any sanction to the instrument by his official character. He attests the execution of the will, and we can not perceive why the description of himself, which he affixes to his signature, should detract from the efficacy of that attestation." As it did not appear that the sindico or the two alcaldes were charged with any special duties, it was practically held that the certificate of acknowledgment, and the official character of the sindico, might be disregarded, and the signature treated as an attestation.

In the case of Clarke v. Turton, 11 Ves. Jr. 240, the will was executed abroad. It appears that three witnesses were required, apparently under the same act of Charles II. as in this case. The third signature was, as in this case, that of the vice-consul, whose attestation was considered necessary to the validity of the act. The case is insufficiently reported, but the court held that the attestation was a memorandum of the vice-consul, to operate as a certificate, "a separate act in his public character, and sealed with his official seal; and therefore it could not be said he subscribed as a witness." The question upon that point was sent to law, but it does not appear what disposition was made of it. It appears that the certificate was an official act, and treated as necessary, but the report fails to show what it contained, and, in the absence of such showing, the case is of little value.

The applicability, and, to some extent, the authority, of this case, is somewhat weakened by that of Griffiths v. Griffiths, L. R. 2 Prob. & Div. 300. The will was signed by the testator in the presence of two witnesses, who signed their names in his presence—one opposite the word "Executors" and the other opposite the word "Witness." There was no attestation clause to the will. The deceased intended one of the witnesses to be his executor, and asked him to sign his name in that character. Lord

Digitized by Google

Penzance held that such person did not sign the will exclusively as executor, but that he also intended by his signature to affirm that the deceased executed the will in his presence, and that consequently the will was valid. Somewhat to the same effect is Pollock v. Glassell, 2 Gratt. 439.

Conceding the general rule to be that witnesses must intend to attest the will as witnesses, the inference is strong that Cooksey did so in this case, as he certifies to the genuineness of the signature of Thomson, and to the acknowledgment of the will in his presence; and these are what would have been required by the law of this District had the instrument been a deed. It is argued that Cooksey did not intend to attest the will, but merely to sign the certificate; but the certificate of what? Only the fact that the will was acknowledged in his presence, and that the signature was genuine. This is precisely the object of an attestation, and as an attestation we think it must be regarded. He may have supposed his official certificate of acknowledgment necessary to the execution of a will in a foreign country, but as he did certify personally to such acknowledgment the addition of his official title adds nothing to, and takes nothing from, the weight of his attestation. We must conclude that he intended to certify exactly what he did certify, and we are giving it exactly the effect he intended to give it.

If the certificate were an official act and material as a separate acknowledgment of the execution of the will, as in the acknowledgment of a deed, the case would be different, since it has never been supposed that a notary, who takes an acknowledgment of a deed, could be counted as a witness to the deed without a separate signature. But here the certificate was a wholly unofficial act, and we see no objection to disregarding the words "vice-consul of the United States," and treating it as an acknowledgment of the execution before a competent witness. The acknowledgment of a will is really a feature of the attestation. The statute did not require that the devisor should sign the will in the presence of the witness, but that the witness should sign in the presence of the testator.

2. The evidence of Thomson's insanity was quite unsatisfactory. It appears that during the autumn or early winter of 1885 he was seized with an acute mania, and on December 15 was committed to a private insane asylum as a lunatic, upon the certificate of two physicians, and at the request of a cousin named James E. Cunningham, a merchant of London, who appears to have taken temporary management of his affairs. He remained in the asylum about six weeks, and on February 1, 1886, somewhat more than three weeks before he executed his will, was discharged as probably cured—in reality granted a leave of absence on probation. The belief in his cure being justified by his subsequent conduct, a formal order of discharge was entered on the record of the asylum on June 26, 1886. Lomer and Linthorne, the witnesses who were present at the execution of the will, and Septimus Cooksey, the son of the vice-consul, all testified to the mental capacity of the testator at that time.

In this connection exception was taken to the exclusion of the application of James E. Cunningham for the admission of Thomson to the insane asylum, and of the certificate of the two physicians as to his insanity. These were properly excluded, not only because they were unsworn testimony, but because they were given in a different proceeding and upon a different issue. Thomson may have been insane to the extent of being dangerous if set at liberty, and yet may have had sufficient mental capacity to make a will, to enter into contracts, transact business, and be a witness. In the case of Leggate v. Clark, 111 Mass. 308, the admission of similar testimony was treated as error. In addition to this, however, these certificates were both dated December 14, 1885, more than two months before the will was made, and are by no means inconsistent with the other testimony that he was released from the asylum as cured February 1, 1886, and that three weeks after that, when he executed the will, he appeared to be of sound and disposing mind and memory.

In addition to the proof of his commitment to the asylum, and of his undoubted insanity prior and for some time subsequent thereto, there was slight evidence of insane acts during the month of February, though there was no opinion expressed by any one that he was incapable of making a valid deed or contract. The whole testimony regarding his insanity was duly submitted to the jury, who were instructed that if they found his insanity to be permanent in its nature and character, the presumptions were that it would continue, and the burden was upon the defendant to satisfy the jury by a preponderance of testimony that he was, at the time of executing the will, of sound mind. There was no error in this instruction.

There were also a large number of exceptions taken to the admission or exclusion of testimony and to the charge of the court, but to consider them in detail would subserve no useful purpose. We have examined them carefully and have come to the conclusion that there was no ruling of the court of which the plaintiffs were entitled to complain. The evidence of insanity was very slight, and there was no legal testimony to show that the will was executed under the pressure of an undue influence.

The judgment of the Court of Appeals is therefore affirmed.

Master and Servant—Risk Assumed by Motorman.—A motorman on a street car assumes the ordinary risks of his employment, so far as they are known to him or could be known by ordinary care. Union Traction Co. v. Buckland, Ind., 72 N. E. Rep. 158.

Libel and Slander—Privilege.—Negligence in failing to understand the meaning and effect of a writing before a publication thereof under circumstances injurious to the character of another prevents the communication from being privileged. Holmes v. Clisby, Ga., 48 S. E. Rep. 934.

Master and Servant—Fellow Servants.—An employee of an electric railway company, repairing the tracks, held a fellow servant with the motorman in charge of a car carrying him to and from his work.—Indianapolis & G. Rapid Transit Co. v. Andis, Ind., 72 N. E. Rep. 145.

Digitized by Google

United States Supreme Court.

ABRAHAM WOLFF, PLAINTIFF IN ERROR,
v.
DISTRICT OF COLUMBIA.

HIGHWAYS—DUTY OF MUNICIPALITY TO KEEP SIDEWALKS FREE FROM OBSTRUCTIONS—DUTY TO LIGHT STREETS.

1. A stepping stone on a sidewalk, near the curb, is not made an unlawful obstruction by the provision of D. C. Rev. Stat., sec. 222, that no portion of the public streets and avenues shall be occupied by any private person, or for any private purpose whatever.
2. The District of Columbia is not charged with the duty so to light a street as to show the presence of a stepping stone on the sidewalk, near the curb, by D. C. Rev. Stat., sec. 233, directing the proper authorities to increase, as the public good may require, the number of street lamps in the city of Washington, and to do any and all things pertaining to the well lighting of the city.—Advance Sheets, February 1, 1905, p. 198.

No. 62.
Argued November 11, 1904. Decided January 3, 1905.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District, entered on a directed verdict in favor of defendant in an action for damages for personal injuries alleged to have been caused by defendant's negligence. Affirmed.

See same case below, 21 App. D. C. 464; 31 Wash. Law Rep. 257.

The facts are stated in the opinion.

Mr. John C. Gittings and *Mr. D. W. Baker* for plaintiff in error.

Mr. E. H. Thomas and *Mr. Andrew B. Duvall* for defendant in error.

Mr. Justice MCKENNA delivered the opinion of the court:

This is an action for damages for injury caused to plaintiff in error (who was also plaintiff below) by an alleged negligent omission of duty by the District of Columbia.

On the 27th of October, 1895, about 9 o'clock in the evening, plaintiff had occasion to visit Sangerbund hall, a house on C street, in the city of Washington. On coming out, and for the purpose of approaching a wagon which was standing in the street, he walked rapidly across the sidewalk, and, by falling over a block of stone called a stepping stone or carriage step, which was on the sidewalk near the curb, broke his leg. Some time subsequently he was compelled to submit to its amputation.

The charge against the city was that it was a body corporate and municipal, and had the power, and it was its duty, to keep the sidewalks free of obstructions and nuisances, one of which, it was alleged, said stone was. And further, that it was the duty of the District of Columbia to keep the streets properly lighted. In neglect of both, it was alleged, it did "allow and suffer" the stone to be securely fastened into and remain upon the sidewalk, and did "keep and continue" it there during the night time of the 27th of October, without a light to show its presence, or a watchman to notify wayfarers of its existence. Damages were laid at $25,000. The District of Columbia pleaded not guilty. A jury was impaneled. At the conclusion of the testimony the District moved the court to instruct a verdict for it on the ground that the plaintiff had not made out a case. The motion was granted, and a verdict in accordance with the instructions. A motion for a new trial was made and denied, and the case was then taken to the Court of Appeals, which affirmed the judgment of the court below. 21 App. D. C. 464; 31 Wash. Law Rep. 257.

The first contention of plaintiff in error is that the stone was an unlawful obstruction per se. This is deduced as a consequence from section 222 of the Revised Statutes of the District of Columbia, which reads as follows:

"No open space, public reservation, or other public ground in the city of Washington, nor any portion of the public streets or avenues in said city, shall be occupied by any private person or for any private purpose whatever."

This section can not be construed to prohibit putting upon a street any object without regard to its effect on the use of the street. The sweeping character of such a construction need not be pointed out. There are objects which subserve the use of streets, and can not be considered obstructions to them, although some portion of their space may be occupied. This is illustrated by a number of cases. In Dubois v. Kingston, 102 N. Y. 219, 55 Am. Rep. 804, 6 N. E. 273, a stepping stone 3 feet 4 inches in length and 20 inches wide was placed on the edge of the sidewalk. The court observed that the stone was not of unusual size or located in an improper place, and that it would be extending the liability of cities too far to hold them liable for permitting stepping stones on the edge of sidewalks.

Robert v. Powell, 168 N. Y. 411, 55 L. R. A. 775, 85 Am. St. Rep. 673, 61 N. E. 699, was also an action for injuries caused by a stepping stone. The court said: "There are some objects which may be placed in, or exist in, a public street, such as water hydrants, hitching posts, telegraph poles, awning posts, or stepping stones, such as the one described in this case, which can not be held to constitute a nuisance. They are in some respects incidental to the proper use of the street as a public highway. . . . The stepping stone in this case, located upon the sidewalk in front of a private house, was a reasonable and necessary use of the street, not only for the convenience of the owner of the house, but for other persons who desired to visit or enter the house for business or other lawful purposes."

It was further remarked: "The question involved in this class of cases is whether an object complained of is usual, reasonable, or necessary in the use of the street by the owner of the premises, or anyone else."

Cincinnati v. Fleischer, 63 Ohio St. 229, 234, 58 N. E. 568, 569, also passed upon a city's liability for the existence of a stepping stone upon a sidewalk. The court said: "It [the stone] was within that portion of the street by the curb, which, according to common knowledge, is devoted to carriage blocks, lamps, hitching posts, and shade trees, which pedestrians of ordinary care observe and avoid." And Elster v. Springfield, 49 Ohio St. 82, 96, 30 N. E. 274, was quoted, to the effect that "the laying of sewers, like that of gas and water pipes, beneath the soil, and the erection of lamps and hitching posts, etc., upon the surface, is a street use, sanctioned as

Digitized by Google

such by their obvious purpose and long-continued usage."

It was held in Macomber v. Taunton, 100 Mass. 255, that a hitching post was not a defect in the highway for which the city was liable for permitting it to remain.

Plaintiff in error cites Scranton v. Catterson, 94 Pa. 203, and Davis v. Austin, 22 Tex. Civ. App. 460; 54 S. W. 927.

In the first case an iron water plug in the middle of a street, and projecting above its surface, was held to be a nuisance. Obviously, the case is not in point. The second case sustains the contention of plaintiff in error, but can not be followed against the authority and reasoning of the other cases.

2. The second contention of plaintiff in error is that it was the duty of the District of Columbia to so light the street as to show the presence of the stone thereon, the District having full knowledge thereof. This duty is made to rest mainly upon section 233 of the Revised Statutes of the District of Columbia, which is as follows:

"The proper authorities are directed to increase, from time to time, as the public good may require, the number of street lamps on any of the streets, lanes, alleys, public ways, and grounds in the city of Washington, and to do any and all things pertaining to the well lighting of the city."

This, in one sense, is but another form of the first contention. The duty of a city to especially illuminate a place where an object is, or to put a policeman on guard by it to warn pedestrians, depends upon the object being an unlawful obstruction.

The plaintiff in error can claim nothing from the general duty of the city under the statute to light the streets. The exercise of such duty was necessarily a matter of judgment and discretion, depending upon considerations which this record does not exhibit.

Judgment affirmed.

Carriers—Duty to Look and Listen.—That a flagman at crossing fails to lower the gates as a person approaches the track does not relieve that person of his duty to look for an approaching train.—Van Riper v. New York, S. & W. R. Co., N. J., 59 Atl. Rep. 26.

Master and Servant—Promise of Master to Remove Danger.—The promise of a master to construct an appliance which would remove a danger to which a servant was exposed does not relieve the servant from assumption of the risk, where the danger was imminent and he continued in the work with full knowledge of it. Crum v. North Vernon Pump & Lumber Co., Ind., 72 N. E. Rep. 193.

Accident Insurance—Liability Covering Expenses of Defending Suit.—The extent of the liability of a casualty company determined, under a policy insuring an employer from loss for liability arising from injuries to employees, with respect to the expense of defending a suit brought against the insured.—Cudahy Packing Co. v. New Amsterdam Casualty Co., U. S. C. C., S. D. Iowa, 132 Fed. Rep. 623.

Master and Servant—Contract of Employment.—Compensation.—Where a servant is employed at a monthly sum, and leaves after 18 days without excuse, and the next day is employed by the week at increased wages, and leaves after 2 days, he can not recover for his 18 days' services. Natalizzio v. Valentino, N. J., 59 Atl. Rep. 8.

Master and Servant—Defective Street Cars.—Where a street car was found defective and marked for repairs, the company is not liable to a conductor for injuries resulting from the car starter ignoring the mark and sending the car out for service. Shaw v. Machester St. Ry., N. H., 58 Atl. Rep. 1073.

Washington College of Law,

1403 New York Ave. N. W.

Ninth year opens **Monday, October 3, at 7 p. m.**, with an introductory lecture, to which the public is cordially invited.

Three years' course leading to degree of LL. B. Post-graduate courses of one year leading to degree of LL. M.

Full corps of eighteen lecturers and professors. Admits as students women and men properly qualified. Lectures between 6.30 and 9 p. m. Tuition, $50 a year.

For year books or further information apply to the Dean.

E. S. MUSSEY, LL. M.,

'Phone East 334-M. 1649 416 Fifth St. N. W.

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMaster, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1664 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

Annual Report of the Otto M. Du Brau Company of Washington.

Authorized capital, $2,000; stock issued and paid for in full, $1,000; stock in treasury, $1,000. Liability—Accounts payable, $793.96; stock issued, $1,000; total liability, $1,793.96. Signed: ANDREW D. PORTER, President; J. HASSON MILLER, Trustee; S. J. BLOCK, Trustee; ANDREW D. PORTER, Trustee.

District of Columbia, *to wit:* I hereby certify that on this second day of March, 1905, before me, the subscriber, a notary public of the District of Columbia, personally appeared Andrew D. Porter, president of said company, and made oath in due form of law that the above account and report is correct. Signed: JOHN L. FLETCHER, Notary Public, D. C. [Seal] 9-1t

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Digitized by Google

Legal Notices.

FIRST INSERTION.

Chas. W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Patrick Folliard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1905. NORA FOLLIARD, 1101 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,665. Administration. 9-3t

In the Supreme Court of the District of Columbia.
William H. Hoeke v. Sydney F. Marshall, Admr., et al.
Equity No. 23,455.

Sydney F. Marshall and Charles A. Douglass, trustees, having reported an offer from Alice E. Birtwell of $350 for sublot 34, in square 1095, in the city of Washington, District of Columbia, said offer, however, subject to the payment of 3 per cent commission, as set forth in said report, it it therefore, this 2d day of March, 1905, ordered that said offer be accepted and the sale of said lot ratified and confirmed on the 3d day of April, 1905, unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 9-3t

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John J. Halsted, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. PENNINGTON HALSTED, 49 Wall street, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,748. Administration. 9-3t

S. Herbert Giesy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William Hogan, Deceased.
No. 12,733. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry C. Birge and Lynndors S. Lucas, it is ordered this 2d day of March, A. D. 1905, that notice be and hereby is given to Margaret Brisbane, Bertha M. Schlesinger, Margaret B. Schlesinger, and William Strong Hogan, and to all others concerned, to appear in said court on Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Samuel L. Kelly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 1st day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. JULIA S. MCALLISTER, 940 K st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,729. Administration. 9-3t

Legal Notices.

Leckie & Fulton and Jos. W. Cox, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of John M. Mitchell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. EMMA F. MITCHELL, 729 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,707. Administration. 9-3t

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of John Conner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. MARY KIRKPATRICK, 1115 23d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,738. Administration. 9-3t

Frank J. Wissner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Zachary Boteler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. HARRY W. BOTELER, 3110 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,690. Administration. 9-3t

George E. Fleming, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Harry U. Walton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. 9-3t

Coldren & Fenning, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James Frame, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. WILLIAM HAMILTON, Produce Exchange, New York. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,685. Administration. 9-3t

Digitized by Google

Legal Notices.

John Raum, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of Pennsylvania, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily S. M. Chisolm,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **27th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of February, 1905. HENRY CLAY CHISOLM, WM. WALLACE CHISOLM, Huntingdon, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,703. Adm. 9-3t

---

Wolf & Cohen, Jesse E. Potbury, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William T. Mathews, Deceased.
No. 12,721. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on the estate of said deceased, by Simon Wolf, it is ordered, this 17th day of February, A. D. 1905, that notice be and hereby is given to **Joseph H. Mathews** and to all others concerned, to appear in said court on **Friday, the 3d day of March, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of two successive weeks before the return day herein mentioned, and at least three times in some newspaper published in the city of Canton, Ohio, before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-1t

---

William L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Pius Stang, Deceased.
No. 12,722. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Alexander Ebert, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Franz Anton Stang, Carl Stang,** brothers, and **Anna Stang** and **(?) Stang,** sisters of deceased, living in Koenigheim, near Tauberbischofsheim, Baden, Germany, and other unknown heirs, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

---

Milton Strasburger, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Deborah E. Whitmore, Deceased.
No. 12,708.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Scaggs, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Louisa Westerfield Vreeland** (non compos mentis), of Newark, New Jersey; **Cecilia Shelley,** of Danville, Illinois; **Maud V. Hart,** of New York City, New York; **Walter Hart,** of Baltimore, Maryland; **Mabel Schilling,** of Baltimore, Maryland; **John Elmer Hart** (minor), of New York City, New York, and **Annie Steinmetz,** of Dayton, Ohio, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

Legal Notices.

SECOND INSERTION.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Frances A. Daly,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of February, 1905. MARY A. DALY, 17 W. Franklin st., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,727. Administration. 8-3t

---

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Eliza Tinney,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of February, 1905. WILLIAM J. WILKINS, 104 Fenwick st., Ivy City, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,680. Adm. 8-3t

---

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William C. Dix, Deceased.
No. 12,712. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Frank P. Davis, it is ordered this 24th day of February, A. D. 1905, that notice be and hereby is given to **Catherine Gillespie, Sarah D. Aikins, Robert W. Dix, Levin A. Dix, Isaac Dix, George H. Dix, William H. Singleton,** and **A. D. Singleton,** and to all others concerned, to appear in said court on **Friday, the 31st day of March, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

---

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia.
Estate of George Mack, Deceased.
No. 11,450. Adm. Doc. 30.

On motion, it is by the court this 24th day of February, A. D. 1905, ordered, that the sales made and reported by Albert F. Fox and B. Elwood Kelley, trustees and executors under the will of George Mack, deceased, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the **24th day of March** next. Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said last named day. The report states that premises No. 105 O street N. W. sold for $2,125, and premises No. 107 O street N. W., and rear frame, for $2,475. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

---

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

Thomas Walker, Solicitor
[Filed Feb. 17, 1905—J. R. Young, Clerk.]
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Moses A. Campbell et al. v. Thomas E. Campbell et al.
Equity No. 24,669. Docket No. 55.

Upon consideration of the report of Thomas Walker, trustee, filed herein, it is, this 17th day of February, A. D. 1905, adjudged and ordered by the court, that the sale thereby reported of the following real estate situate in city of Washington, in the District of Columbia, and known as lot 26 in W. B. Todd's subdivision of original lot 9 in square 642, being premises No. 626 Delaware Ave. S. W., to Thomas P. Brown, for $430, be ratified and confirmed unless cause to the contrary be shown on or before the **20th day of March, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 8-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **William L. Read,** deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 17th day of March, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of February, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,788. Administration. 8-3t

Barnard & Johnson, Solicitors
In the Supreme Court of the District of Columbia.
Jennie R. Willoughby, Complainant, v. Edgewood Syndicate et al., Defendants.
Equity No. 24,343.

The object of this suit is to obtain the partition, by sale, among the parties to this cause, of block two (2), in Catherine Chase and others' subdivision of part of a tract of land called "Metropolis View," now called "Edgewood," as the same appears of record in the office of the surveyor of the District of Columbia, in County Book No. 7, page 98. On motion of the complainant, it is, this 17th day of February, A. D. 1905, ordered that the defendants, **Frank M. Green, E. F. Conant, Frederick O. Fish, J. M. Hawley, Caroline G. Hawley, and C. C. Jones,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default, said publication to be in The Washington Law Reporter and the Evening Star once a week for three successive weeks. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-3t

Gittings & Chamberlin, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward G. Niles, Deceased.
No. 12,709. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Meredith Niles, it is ordered this 21st day of February, A. D. 1905, that notice be and hereby is given to **Alexander Bielaski, Catonsville, Md.; Agnes Sprague, 520 Main St., Brooklyn, N. Y.,** and to all others concerned, to appear in said court on **Monday, the 27th day of March, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

Legal Notices.

Chas. F. Benjamin, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Solomon Carr,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **17th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of February, 1905. CHAS. F. BENJAMIN, 504 11th st. N. W.; ED. MANGUM, Kendall Green, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,658. Administration. 8-3t

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Reuben B. Detrick,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of February, 1905. GEORGE W. F. SWARTZELL, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,549. Administration. 8-3t

William B. Reilly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Frederick S. Clements,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of January, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1905. THERESA E. CLEMENTS, 1131 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,617. Administration. 8-3t

J. J. Darlington, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louis D. Wine,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1905. CLARENCE B. RHEEM, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,725. Administration. 8-3t

THIRD INSERTION.

Wm. W. Boarman and Hayden Johnson, Att'ys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Franklin H. Mackey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to my attorney, Wm. W. Boarman, Columbian Building, on or before the **16th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of February, 1905. HORACE S. CUMMINGS, 1416 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,585. Administration. 7-3t

Digitized by Google

Legal Notices.

Edward S. McCalmont, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James A. Freer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of February, 1905. ELIZABETH McC. FREER, 1369 Kenesaw ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,719. Administration. 7-3t.

J. B. Larner, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Charles Brooks Bailey, Petitioner, v. E. Welsh Ashford, Trustee, et al., Defendants.
Equity. No. 25,094.

The object of this suit is to obtain a release of a deed of trust dated January 13, 1898, and recorded in liber 2287 at folio 189 et seq. of the land records of the District of Columbia, from Oella Chappel, et vir. Loring Chappel, to E. Welsh Ashford and William K. Ellis, trustees, conveying lot 62 in Oella Chappel's subdivision of part of square 911 in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, John B. Larner, and it appearing to the court that the summons issued herein against the defendant, **Anna B. Kendall**, has been returned "not to be found," and the non-residence of the said defendant having been proved by affidavit to the satisfaction of the court, it is this 16th day of February, 1905, ordered that the said defendant, **Anna B. Kendall**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter. By the court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-3t

---

Walter C. Clephane, Solicitor
In the Supreme Court of the District of Columbia.
William S. Powell, Complainant, v. the Unknown Heirs, Alienees, or Devisees of Sarah Lingan, Anne Caldwell, John Bernard, and Jane Parrott, Defendants. In Equity. No. 25,135.

The object of this suit is to declare the title to original lot numbered twelve (12), and part of original lot numbered eleven (11), in square numbered one hundred and five (105), beginning for said part of original lot numbered eleven (11) at the northwest corner thereof, and running thence east on the north line of said lot sixty-one (61) feet, thence south twenty-five (25) feet nine (9) inches, thence west twenty (20) feet, thence north nine (9) inches, thence west forty-one (41) feet to the line of Nineteenth street west, and thence north on said street twenty-five (25) feet to the place of beginning, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Walter C. Clephane, his solicitor, it is this 14th day of February, 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of Sarah Lingan, Anne Caldwell, John Bernard, and Jane Parrott, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. YOUNG, Clerk, by F. E. Cunningham, Asst. Clerk. 7-4t

---

OFFICIAL edition, United States Bankruptcy Law of July 1, 1898, and Amendments of February 5, 1903, with marginal notes and full Index. General Orders and Forms adopted by the United States Supreme Court, November 28, 1898. Price, paper, 50c; cloth, $1, delivered by mail. The only complete edition. THE LAW REPORTER CO., Printers, Stationers, and wholesale and retail dealers in Bankruptcy Supplies. Washington, D. C. M. W. Moore, Manager. Phone Main 828.

Legal Notices.

Charles W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Keenan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of February, 1905. BRIDGET M. KEENAN, 460 Penn. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,702. Administration. 7-3t

---

Morgan H. Beach, Solicitor.
In the Supreme Court of the District of Columbia.
In the Matter of the Condemnation of Lots 7 and 8 in Square 826, Washington, D. C., as a Portion of the Site for an Addition to the Washington Navy Yard.
No. 683. District Court.

The object of this suit is to acquire by condemnation by the United States the title in fee simple to lots seven (7) and eight (8) in square eight hundred and twenty-six (826) in the city of Washington, in the District of Columbia, as a portion of the site for an addition to the Washington Navy Yard. On motion of the United States attorney, it is by the court this 14th day of February, A. D. 1905, ordered that the defendants, Westminster College (formerly Sheldon Jackson College), a body corporate; Francis E. Dana, Francis E. Dana, trustee; Elizabeth B. Beard and Samuel E. Beard, her husband; William Gunton Budington; Thomas Gunton Budington and Sarah E. Budington, his wife; Trustees of the Fund for the Relief of the Widows and Orphans of Deceased Clergymen and of Aged, Infirm, and Disabled Clergy of the Protestant Episcopal Church in the United States of America, a body corporate; Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, a body corporate; George Wilcox, Herbert Budington Wilcox, Julia Budington Wilcox, Charles D. Knowlton and Mary E. Knowlton, his wife; Nellie E. Drew and Fred E. Drew, her husband; Albertus Knowlton and —— Knowlton, his wife; Georgiana Young and Albert Young, her husband; Klever J. Knowlton and Stella V. Knowlton, his wife; Samuel M. Castell and Annie Castell, his wife; Frank Milnor, Walter Lee Milnor, otherwise called Lee Milnor, and Robert Garret Milnor, otherwise called Frank Milnor, minors, and Frank Milnor, with whom they reside; Arthur Milnor, minor, and Margaret Milnor, with whom he resides; William H. K. Nokes, Regina Castell Russell and Robert L. Russell, her husband; Vincent L. Castell, minor, and Regina Castell Russell, with whom he resides; Henry E. Skinner and Cecilia Skinner, his wife; Emmet W. Skinner and Kate Skinner, his wife; J. Edward Douglass, Rose Douglass, Mary Douglass, Catherine Douglass, and John Douglass, minors, and J. Edward Douglass, with whom they reside; Ashby L. Skinner and Lillian Skinner, his wife; Benjamin C. Skinner and —— Skinner, his wife; Mary C. Douglass and J. Edward Douglass, her husband; Robert J. Christie, Elizabeth Cotton, Emma Lee Graves, Laura Virginia Christie, Cassius Christie, and Tea Christie, his wife; Robert J. Christie, jr., and Lelia Christie, his wife; Augusta Maud Fry and Hervey Fry, her husband; Mattie Augusta Foley and H. Lynn Foley, her husband; Thomas Clagett Skinner and Florence Skinner, his wife; Joel W. Nixon and Bettie Nixon, his wife; Christian Reamer, William Reamer, Edwin Reamer, minor, and Emmet W. Skinner, with whom he resides; James Reamer, Mary Reamer, Charles T. Baldwin, and Laura Jane Laws, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order shall be published once a week for three successive weeks in The Washington Law Reporter, The Evening Star, and The Washington Post. ASHLEY M. GOULD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, jr., Asst. Clerk. 7-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices

Cole & Donaldson, Jesse E. Potbury, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Joseph W. Parish, Deceased.
No. 12,677. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Emily E. Parish, it is ordered, this 14th day of February, A. D. 1905, that notice be and hereby is given to **James H. Parish**, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

Birney & Woodard, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Nina E. Allender, Complainant, v. Charles H. Allender and Bessie M. Rockwell, Defendants.
In Equity. No. 25,150.

The object of this suit is to obtain an absolute divorce from the defendant, Charles H. Allender, on the ground of adultery. On motion of the complainant, it is, this 15th day of February, A. D. 1905, ordered that the defendants, **Charles H. Allender and Bessie M. Rockwell**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks prior to said day in The Washington Law Reporter and The Washington Times. By the court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-3t

Birney & Woodard, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Margaret Green, Deceased.
No. 12,686. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by John A. Garver, the executor named in said will, it is ordered, this 16th day of February, A. D. 1905, that notice be and hereby is given to **Charles A. Green and Frank S. Green**, and to all others concerned, to appear in said court on **Wednesday, the 22d day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

James F. Bundy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary Wade, Deceased.
No. 12,675. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Waverly Anderson, it is ordered this 14th day of February, A. D. 1905, that notice be and hereby is given to **Thomas C. Wade** and to all others concerned, to appear in said court on **Friday, the 17th day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

Legal Notices.

Gittings & Chamberlin, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Harriet Ann Butler, Deceased.
No. 12,689. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Wallace McK. Stowell, it is ordered this 15th day of February, A. D. 1905, that notice be and hereby is given to **David H. Butler**, and to all others concerned, to appear in said court on **Monday, the 20th day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anthony Hanlon, Deceased.
No. 12,627. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John A. Heenan, it is ordered this 10th day of February, A. D. 1905, that notice be and hereby is given to **Anthony Hanlon**, son of said deceased, and to all others concerned, to appear in said court on **Tuesday, the 14th day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

William D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Rosa Cooper**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 10th day of March, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of February, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF DISTRICT OF COLUMBIA, by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,979. Administration. 7-3t

F. Edw. Mitchell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Otto Broderson, Deceased.
No. 12,455. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Amelia Broderson, it is ordered this 13th day of February, A. D. 1905, that notice be and hereby is given to **Andrew Broderson and Mary Broderson and all unknown heirs at law and next of kin of said decedent**, and to all others concerned, to appear in said court on **Monday, the 20th day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

Digitized by Google

Legal Notices.

W. Calvin Chase, Solicitor

In the Supreme Court of the District of Columbia.

Mary Elizabeth Rudder, Petitioner, v. James Troy Rudder, Defendant.

No. 22,984. Equity Docket, No. 51.

The object of this suit is for an absolute divorce on the grounds of willful desertion and abandonment of the petitioner by the defendant and non-support. On motion of the complainant, it is this 9th day of March, A. D. 1903, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law Reporter and in The Washington Bee. By the court. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 7-3t

---

Chas. F. Wilson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Roberta S. Entwisle**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of February, 1905. WILLIAM S. HOGE, JR., 915 La. Ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,623. Administration. 7-3t

---

Geo. R. Linkins, Solicitor

In the Supreme Court of the District of Columbia,

Terrance J. McMahon, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Joseph Covachich and Thomas Dougherty, Defendants.

Equity No. 25,128. Docket No. 56.

The object of this suit is to establish in complainant a fee simple title by adverse possession to the north twenty (20) feet front on Third street, by full depth of original lot ten (10), in square five hundred and twenty-three (523), subject to an easement for alley purposes, over the rear five (5) feet thereof. On motion of the complainant, it is, this 15th day of February, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees, both mediate and immediate, of Joseph Covachich and Thomas Dougherty, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order, otherwise the cause will be proceeded with as in case of default. This order shall be published once a week for four successive weeks in The Washington Law Reporter before said return day, it appearing to the court, upon good cause shown, based upon the affidavit filed herein, that further publication is unnecessary. By the court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-4t

---

Edward L. Gies and Chas. W. Boyle, Solicitors

In the Supreme Court of the District of Columbia.

James J. Garvey, etc., Complainant, v. Michael R. Leahy et al., Defendants. Equity. No. 21,753.

The object of this suit is to set aside a conveyance and secure the sale of an equity of redemption in lot thirty-seven (37), square five hundred and thirty-six (536), lot nine (9), square five hundred and eighty-nine (589), and lots seven (7) and twenty (20), in square five hundred and eighty-one (581), situated in the District of Columbia, to satisfy the judgment of the complainant. On motion of the complainant, it is this 18th day of February, A. D. 1905, ordered that the defendants, **Michael R. Leahy** and **Anastasia Leahy**, cause their appearance to be entered herein, on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-3t

Legal Notices.

In the Supeme Court of the District of Columbia.

Elizabeth A. Wells v. Henry W. Wells and Mamie Finn, alias Mrs. Mamie Wells.

No. 22,894. Equity Docket No. 51.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant, Henry W. Wells, on the ground of adultery. On motion of the complainant it is, this 10th day of February, A. D. 1905, ordered that the defendant, **Mamie Finn, alias Mrs. Mamie Wells**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three weeks prior to said day. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-3t

---

FOURTH INSERTION.

A. B. Duvall, E. H. Thomas, and A. B. Duvall, Jr., Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of James S. Robinson, Deceased.

No. 10,978. Administration.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 18th day of April, 1902, purporting to be the last will and testament of **James S. Robinson**, deceased, has been returned as to **Edwin T. Collins**, "not to be found," it is, this 3d day of February, 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **8th day of March, 1905**, and that this order and a copy of said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter, and twice a week for the same period in The Evening Star. ASHLEY M. GOULD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.

ISSUES.

1. Was the paper writing dated the 18th day of April, 1902, purporting to be the last will and testament of the said James S. Robinson, deceased, executed and attested in due form as required by law. 2. Was the said James S. Robinson, at the time of the execution of the said paper writing dated on the, to wit, 18th day of April, 1902, of sound and disposing mind and capable of executing a valid deed or contract or will. 3. Was the execution of the said paper writing dated on the, to wit, 18th day of April, 1902, procured by the fraud, misrepresentation, or artifice, or while he, the said James S. Robinson, was under the undue influence of Snowden W. Robinson or Alvira Robinson, or of any person or persons. 6-4t

---

Charles S. Shreve, Jr., and William F. Hall, Solicitors

In the Supreme Court of the District of Columbia.

The Springfield Fire and Marine Insurance Company, a Corporation, Complainant, v. John B. Wight, Trustee, et al., Defendants. Equity No. 25,122. Docket No. 56.

The object of this suit is to appoint trustees and for the foreclosure of lots D, E, F, G, H, and I, in Gideon L. Walker's subdivision of lots in square numbered 172, under deed of trust recorded in Liber 2260, at folio 460 et seq., land records of the District of Columbia, said trust having been given to secure a certain note dated December 31, 1897, in the sum of $9,000.00, payable to the order of the Springfield Fire and Marine Insurance Company. On motion of the complainant, it is, this 9th day of February, A. D. 1905, ordered that the defendants, **John B. Wight, trustee; A. Willard Damon, trustee; Charles H. Barrows, and the Massachusetts Society for the Prevention of Cruelty to Animals, a corporation**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said return day in The Washington Law Reporter and The Washington Times. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 6-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 10

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MARCH 10, 1905

CONTENTS.

Editorial 145
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Louis Kann et al., appellants, v. Caroline King. Henry Randall Webb, executor, etc., appellant, v. Caroline King 147
Frank B. Swart, appellant, v. Joseph S. Justh 149
Wilson Gray Hawley, appellant, v. Columbia Railway Company 150
Neely Electric Construction and Supply Company, appellant, v. Henry C. Browning et al 152
Benjamin Klopfer, appellant, v. The District of Columbia 153
UNITED STATES SUPREME COURT:
Martha I. Hunt, plaintiff in error, v. Springfield Fire and Marine Insurance Company 154
Legal Notices 156

DECISIONS BY THE COURT OF APPEALS.

Decisions in a number of cases, some of them of especial interest, have been handed down by the Court of Appeals during the present week:

CONSPIRACY IN RESTRAINT OF TRADE.

In Leonard et al. v. Abner-Drury Brewing Company et al., the suit was brought by two liquor dealers, in behalf of themselves and others, to enjoin an alleged unlawful conspiracy entered into by the defendants to coerce another brewing company, whose action it was alleged had resulted in a reduction in price of brewed and malt liquors, into becoming a member of an association formed by them, and thereby to enhance the price of such liquors, to the injury of complainants. The lower court sustained a demurrer to the bill, on the ground that complainants had no such property interest as they had a right to ask the court to protect, and were not in a position to maintain the suit. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the decree, holding that proof of the allegations of the bill would entitle complainants to some measure of the relief prayed.

CERTIORARI TO REVIEW TAX SALE.

In Guy v. District of Columbia, the proceeding in the court below was in certiorari to bring up the record of certain assessments and a tax sale thereunder, and for a cancellation of the tax sale. The trial court quashed the writ of certiorari, and its order was affirmed by the Court of Appeals, in an opinion by Mr. Justice Morris.

SUIT TO ENFORCE STOCKHOLDERS' LIABILITY FOR UNPAID SUBSCRIPTIONS.

In People's National Bank et al. v. Saville et al., the suit was instituted by certain creditors of an insolvent corporation for the purpose of enforcing against forty-nine defendants, all residing in this District, liability for unpaid subscriptions to its capital stock. The court below held that the suit could not be maintained, as the right of complainants, if any existed, was such as must be enforced, if at all, in a separate suit against each stockholder; and his ruling is affirmed by the Court of Appeals in an opinion by Mr. Justice Morris.

MALICIOUS PROSECUTION.

In Staples v. Johnson the appeal was from a judgment in favor of the plaintiff, in an action for malicious prosecution. The plaintiff was employed by defendant as night clerk in a hotel, and as such was intrusted with $10 with which to make change for patrons. He was discharged without previous notice, and at the time was given the money alleged by defendant to be due him, but he claimed a larger amount, and refused to surrender the $10 until that amount was paid. The defendant retained his baggage, and plaintiff had judgment in an action of replevin brought to recover it. The defendant thereupon procured the arrest of plaintiff on a charge of larceny of the $10, and subsequently on a charge of embezzlement. The former charge was nolle prossed, but he was held for the grand jury on the latter, which charge was ignored by them. In the trial court plaintiff had verdict and judgment for $2,500, which was affirmed by the Court of Appeals, in an opinion by Mr. Justice Duell, that court saying that the retention by the plaintiff of the $10 was without concealment and under a claim of right evidently made in good faith, and that whether such claim was well founded or not was immaterial.

PERSONAL INJURIES; RELEASE; FRAUD.

In Rockwell v. Capital Traction Company the action was to recover for personal injuries to the female plaintiff. The defendant set up a release of all claims. The plaintiff contended that the release had been obtained by fraud, and at the beginning of the trial tendered to defendant the amount received, but the tender

Digitized by Google

was declined. The trial court held the evidence insufficient to establish the charge of fraud, and directed a verdict for defendant, upon which there was judgment. The Court of Appeals holds the tender to have been made in time, and that the question of fraud in obtaining the release should have been submitted to the jury. The judgment was therefore reversed and a new trial awarded, in an opinion by Mr. Chief Justice Shepard.

EQUITY; LACHES.

In Columbian University et al. v. Taylor et al., the suit was brought by certain heirs of the late Admiral Powell to avoid a trust created by his will, the relief sought being the recovery of certain valuable property, with an accounting for rents and profits. The defendants demurred to the bill on the ground of laches, and were allowed a special appeal from the order overruling the demurrer. The Court of Appeals affirms the order of the court below, in an opinion by Mr. Chief Justice Shepard.

MUNICIPAL EMPLOYEES; EXTRA COMPENSATION.

In Myers v. District of Columbia, the plaintiff sought to recover compensation for extra services beyond those included in his employment as janitor at the manual training school. The trial court sustained a demurrer to the declaration, holding that the board of trustees had no power to bind the District by an agreement to pay plaintiff a greater sum than that appropriated for him as janitor, no matter what services he rendered. This ruling the Court of Appeals affirms, in an opinion by Mr. Justice Duell, which reviews the legislation upon the subject.

CITIZENSHIP OF PORTO RICAN.

In U. S. ex rel. Rodriguez v. Bowyer et al., the relator, a Porto Rican, who had been denied by the board of employment of the Washington Navy Yard the right of examination for employment in the yard, on the ground that he was not a citizen of the United States, appealed from an order of the court below dismissing his petition for a writ of mandamus to compel the board to examine him. The Court of Appeals reverses the order, in an opinion by Mr. Chief Justice Shepard, holding that the relator possessed the necessary qualifications as to citizenship under the civil service regulations to make him eligible to employment in the Government service.

SECOND-CLASS MAIL MATTER; PUBLICATION OF CORRESPONDENCE COLLEGE.

In Columbian Correspondence College v. Wynne et al., the appellant, a joint stock company furnishing instruction by the correspondence method, appealed from a decree dismissing its bill to enjoin the officials of the Postoffice Department from revoking a certificate admitting a publication issued by the college to the mails at second-class rates. The Court of Appeals reaffirms its previous ruling in the case of Chicago Business College v. Payne, 30 Wash. Law Rep. 812, and holds that the college, being conducted for private gain, is not an educational institution within the meaning of the act of Congress of July 16, 1894. The opinion of the court was delivered by Mr. Justice Duell.

TRESPASS; STATUTE OF LIMITATIONS.

In Jackson v. Emmons, the action was in trespass, the facts being fully stated in the opinion on a previous appeal, reported in 30 Wash. Law Rep. 72. There were several trespasses, two of which were barred by the statute of limitations. The trial court limited the right of recovery to the third and last trespass, excluding also a claim for injury to plaintiff's wife occasioned by one of the other trespasses. The Court of Appeals affirms this ruling, in an opinion by M. Justice Morris.

FRAUDULENT CONVEYANCES; BILL OF SALE.

In Morimura v. Samaha, the question was as to whether a bill of sale by dealers in oriental goods had been made with intent to defraud their creditors. The defendant claimed to be a bona fide purchaser, without notice of the fraud. The trial court instructed the jury that if they found that defendant paid money as claimed for the goods, the burden was on the creditors attacking the sale to show that he had actual notice of the fraud of the vendors, or actually suspected it and wilfully abstained from making inquiry to avoid having notice. This the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds to be error, stating the true rule in such cases to be that if the purchaser has actual knowledge of the fraud, or knowledge of facts sufficient to put a person of ordinary prudence upon inquiry which, if pursued with reasonable diligence, would lead to a discovery of the fraud, then the sale is fraudulent and void.

POLICE REGULATIONS; OBSTRUCTING STREETS.

In Gassenheimer v. District of Columbia, the Court of Appeals, in an opinion by Mr. Justice Duell, reverses a conviction of the plaintiff in error, in the Police Court, upon a charge of obstructing the streets in front of his hotel by allowing automobiles for hire to stand there. It is held that a hotel proprietor has the right to have vehicles in front of his premises for the use of his guests; and the fact that one not a guest of the hotel succeeds in hiring one of the vehicles is not of itself sufficient evidence upon which to base a conviction.

THE decision in the case of Kann et al. v. King and Webb v. King is reported in this issue.

Digitized by Google

Court of Appeals of the District of Columbia.

LOUIS KANN ET AL., APPELLANTS,
v.
CAROLINE KING.

HENRY RANDALL WEBB, EXECUTOR, ETC., APPELLANT,
v.
CAROLINE KING.

TAXATION; ASSESSMENT IN WRONG NAME; INVALID SALE; REPORT OF SALE; LEASE; FORFEITURE; FAILURE OF LESSEE TO PAY TAXES.

1. The assessment of real estate for taxation in the name of a person who has been dead for 25 years, instead of in the name of the person deriving title to it by inheritance from the deceased and who for the said period of 25 years has been the owner of the property, is not a compliance with the act of August 15, 1894 (28 Stat. 282), providing that all real property shall be assessed for taxation in the name of the owner, or trustee of the owner thereof, and that all undivided property of a deceased person shall be assessed in the name of such decedent until the same has been divided by law, or has passed into the possession of some other person, etc.
2. Failure to assess in the name of the new owner is, in such case, a fatal irregularity which, as between the true owner and the purchaser at a tax sale or his assignee, is sufficient to vitiate all the subsequent proceedings.
3. The law requiring the assessment to be made in the name of the new owner, the taxing officers must ascertain his or her identity as best they can if they would have their proceedings entirely valid and indefeasible.
4. Statutory requirements in the matter of the sale of property for taxes must be strictly pursued in order to divest title.
5. The report of sale made by the collector of taxes, in attempted compliance with the requirements of the act of February 24, 1898 (30 Stat. 250), held insufficient to meet these requirements, and the certificate of sale and the deed issued thereon held null and void.
6. Forfeiture by a lessee of her lease because of failure to pay taxes assessed against the property as required by the lease relieved against where it appeared that the invariable custom of the lessor down to the time of the default had been to demand and receive the amount of the taxes from the lessee and to pay the taxes herself by her own agents, and that for some reason she had failed to make the usual demand for money wherewith to pay the taxes in connection with which the default occurred,—the default of the lessee being excusable under the circumstances.
7. The defense of multifariousness held not available to the defendants,—the testimony disclosing an arrangement between the defendants to use the tax certificate and deed thereunder to oust complainant from the property in order that one of the defendants might become the lessee of it.

Nos. 1456 and 1457. Decided March 8, 1905.

APPEALS by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,684, in suit to enjoin landlord and tenant proceeding, and to have a tax deed declared null and void. Affirmed.

Mr. W. G. Johnson and *Mr. Myer Cohen* for the appellants Kann et al.

Mr. R. Ross Perry and *Mr. R. Ross Perry, Jr.*, for the appellant Webb.

Mr. J. J. Darlington and *Mr. Leon Tobriner* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This case was formerly before this court on an appeal from an interlocutory order awarding an injunction pendente lite (Webb v. King 21, D. C. App. 141: 31 Washington Law Reporter, 79); and the facts as then developed by the pleadings, and which have not been greatly, if at all, modified by the testimony that was subsequently taken, were stated in the opinion then rendered and need not be here repeated at length. The cause comes now before us again on appeal from the final decree, wherein the court below found the issues in accordance with the complainant's bill and decreed in accordance with the prayers of that bill.

The complainant, here the appellee, was the lessee of certain demised premises. Through inadvertence or negligence she permitted certain taxes, which by the lease she was required to pay, to remain in arrears and the property to be sold for the payment of such taxes, and a certificate of sale to be issued therefor, and finally a tax deed to be executed and recorded. For this it was sought to forfeit her lease; and she filed her bill in equity to be relieved from the forfeiture; to enjoin the proceedings that had been instituted to dispossess her; to have the tax certificate and the tax deed declared null and void; and to have the holders of them perpetually enjoined and restrained from setting them up. The paramount question in the case is that of the validity of these tax proceedings; and it will simplify the consideration of the other questions that are raised if we first dispose of this one.

But this question we think the Supreme Court of the United States has already determined for us in the cases of City of Washington v. Pratt, 8 Wheaton, 681; Roukendorff v. Taylor, 4 Pet. 349, and the comparatively recent case of Marx v. Hawthorn, 148 U. S. 172.

1. The act of Congress of August 15, 1894 (28 Stat. 282), which was in force at the time of the tax proceedings in question were had, and which is yet in force, provides that "all real property in the District of Columbia, except as hereinafter provided, shall be assessed (for taxation) in the name of the owner, or trustee or trustees of the owner thereof;" that "all undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided according to law, or has passed into the possession of some other person or persons;" and that "all real property, the ownership of which is unknown, shall be assessed 'owner unknown.'"

The owner of the property involved in the present litigation was, and had been for upwards of twenty-five years, Mrs. Marianne A. B. Kennedy, who had inherited it in the year 1871 from a relative, Maria T. Gillis. On the assessment books of the District the property continued to be assessed in the name of Maria T. Gillis, although she had died in the year just named, and was advertised and sold in her name for default in the payment of taxes in the year 1899.

Now, it is very clear that this assessment did not comply with the requirement of the act of Congress. A deceased person can not be the owner of property in the sense of the law. Especially can not a deceased person continue for twenty-five years after his death to be the owner of property. Assessment and the other

Digitized by Google

requirements of the tax laws are intended to warn the living owner that his property is being dealt with by the public authorities under their supreme power to divest title in the event of failure to pay the public dues; and that living owner is entitled to the benefit of that warning to its fullest extent and to the most faithful compliance with the provisions of the statute. City of Washington v. Pratt, supra. It will not do, therefore, to take a former owner, and continue his name until it suits the public authorities to change the assessment.

Provision is made by the statute, perhaps inadequate provision, for the ascertainment by the taxing officers of the names of the owners of property for this purpose of assessment; for the recorder of deeds and the register of wills are both required to report annually to the tax officers all transfers of real estate recorded in their respective offices. This does not seem to cover the case of devolution of title by descent, except apparently in the case of a division of an estate and the execution of deeds of partition by the several parties in interest; and it is not apparent what steps the taxing officers are to take to ascertain the living owner of property when the former owner has departed this life, and there is perhaps only one heir and no division of the estate. And yet the law specifically requires such ascertainment of ownership, for it specifically provides that the assessment in the name of the deceased person may not be continued beyond the partition of the estate, or until the estate "has passed into the hands of some other person." The new owner is such other person; and the taxing officers must ascertain his identity as best they can, if they would have their proceedings entirely valid and indefeasible. Such is the positive doctrine of the case of City of Washington v. Pratt. And the result is that failure to assess in such name is a fatal irregularity, which, as between the true owner and the purchaser at a tax sale or his assignee, is sufficient to vitiate all the subsequent proceedings.

Again, in the act of Congress of February 24, 1898 (30 Stat. 250), which regulates the matter of tax sales in this District, there is a provision that, within twenty days after the last day of sale, the collector of taxes shall file in the office of the Recorder of Deeds for the District a report in writing in which he shall give a statement of the property sold, the names of the persons to whom it is assessed, the amount of taxes due thereon, the name of the person to whom it has been sold, the amount for which it has been sold, the cost of sale, the date of sale, and the surplus, if any (act of February 28, 1898, sec. 3). The purpose of all this is very plain. It was to give further and explicit notice to the citizen, whose property was affected and was about to be taken from him, to warn him of his danger, and to give ample information as to what was required to be done in order that he might relieve his property from its predicament. Under this act he is entitled to have all the details of the statute strictly complied with; and a failure of such compliance may suffice to vitiate all the subsequent proceedings.

In the present case the collector of taxes filed a report, which, so far as it relates to the property here in controversy, was as follows:

Date.	Property Sold.	Items of Sale.	Amt. sold for.	Purchaser.
April 13.	.....	.....	.....	C.H. Wiltsie.
	.....	.....	.....	C.H. Wiltsie.
	Square 432.....	2d half of tax for year 1898.	128 50	Do.
	Sub-lot A & imp'ts.	Penalty.....	14 13	
	To whom assessed	Watermain tax.		
	Maria T. Gillis.	Interest from Assessment for		
		Interest from		
		Advertising.....	1 20	

Now, it is very plain that this report does not comply with the requirements of the law. There is no statement of the amount of taxes due on the property, or of the cost of sale, or perhaps even of the amount for which it was sold. We might conjecture that the third and fourth columns are to be read together, and that the figures in the fourth column, under the head of "amount sold for," are also intended to indicate the amount of taxes due; but this would be only conjecture, and the statute requires certainty. For many less important defects than this tax sales have been declared void; and it is believed that the universal tendency of decision throughout the States of our Union is that statutory requirements of this character must be strictly pursued in order to divest title. But in view of the decisions in the Supreme Court of the United States already mentioned it is unnecessary to cite further authority.

Various other alleged defects and irregularities have been pointed out in these tax proceedings, but we deem it unnecessary to consider them. The two which have been specified are in our opinion sufficient to vitiate the certificate and the deed that were issued in this case; and we must hold both the certificate and the deed to have been null and void as against the appellee.

2. These instruments being null and void, the matter stands as though they had never been issued—although, of course, they must be regarded as a cloud upon the title of this property, which can be removed in a court of equity; and the situation, therefore, is that there are taxes upon the property in arrears, due and unpaid, for which the lessee is liable, and for the failure to pay which the lessor seeks to enforce a forfeiture of the lease. And the lessee, claiming that her failure to pay at the proper time was the result of inadvertence or misadventure, now offers to pay them, and seeks to be relieved from the forfeiture or threatened forfeiture. This we have already held in our opinion on the former appeal she is entitled to do, if the allegations of her bill are borne out by the testimony in the case.

But the testimony makes it more plain than even the allegations of the bill of complaint did that she is entitled to the relief which she asks. The testimony shows quite conclusively that, while the lease required the annual taxes on the property to be paid by the lessee, yet the invariable custom of the lessor down to the time of the default had been to demand and receive the amount of the taxes from the lessee, and to pay the taxes herself by her own agents.

Digitized by Google

For the taxes of the second half of the year 1898, in connection with which the default occurred, the lessor failed for some reason to make the usual demand for the money wherewith to pay the taxes; and the lessee was in the midst of financial trouble and distress caused by the recent death of her husband, who had been the lessee down to the time of his death. The record shows to us quite plainly that the default of the lessee was excusable under the circumstances; and that no harm would be done to anyone by her relief from the nominal forfeiture which she has incurred.

3. The defense of multifariousness in the bill of complaint is again insisted on as it was at the former hearing. But we think that what we said at that former hearing must suffice to dispose of the objection now. The determination of that question depends upon the inquiry as to whether there was an arrangement, or understanding, or combination, or whatever we may call it, between the defendants to the suit, whereby the tax certificate that had been issued against the property involved in the proceedings was to be acquired and used in the interest of the Kanns to coerce the appellee out of the property and to enable the Kanns to become the possessors or lessees of it. We find no evidence whatever in the record of any fraud or wrongdoing perpetrated by any one concerned. We only find the evidence of a situation created by keen commercial rivalry and shrewd management, wholly untainted by wrong doing, but still a situation from which injury is threatened to the complainant's rights of property, and against which she is entitled to be relieved. For that there was an arrangement between the defendants whereby the tax certificate was to be used to oust the complainant from the property, we think is too plain to be reasonably questioned. There was undoubtedly a concurrence of effort for that purpose, perhaps no formal combination or preconcerted action. But it matters not what we call it. The undoubted fact is that there was cooperation between the defendants to use the tax certificate to the detriment of the complainant's rights; and there being such cooperation, the defense of multifariousness can not prevail. The one purpose of the bill is to relieve the complainant from the effect of this tax certificate and of the tax title based upon it.

From what we have said it follows in our opinion that the decree appealed from was right and just, and that it should be affirmed, with costs. And it is so ordered.

Affirmed.

FRANK B. SWART, APPELLANT,
v.
JOSEPH S. JUSTH.

CONTRACTS; NEGLIGENCE OF CONTRACTOR; LIABILITY OF OWNER OF BUILDING.

1. Where, at the request or in obedience to the directions of the owner of a building, for whom he had constructed a skylight therein, the contractor undertakes the removal of the old material, he is in so doing the agent or employee of the owner, and the latter is liable for his negligent performance of the work.
2. But where, on completion of his contract for constructing the skylight, the owner makes a gift of the old material to the contractor, who in removing it acts only for himself and without any direction of the owner, the owner is not liable for the negligent manner in which the removal is made by the contractor.

No. 1417. Decided February 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,353, entered upon the verdict of a jury in an action for personal injuries. Affirmed.

Mr. Arthur Peter and *Mr. Preston B. Ray* for the appellant.

Mr. L. Cabell Williamson for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action to recover damages for personal injuries sustained by the plaintiff, Frank B. Swart, through the negligent acts of the servants and agents of the defendant, Joseph S. Justh. The declaration is in the ordinary form, and issue was joined on defendant's plea of not guilty.

The evidence is recited as follows in the bill of exceptions:

"Be it remembered, that on the trial of this cause, the plaintiff, in order to maintain the issues on his part joined, gave proof tending to show that the defendant on the 15th day of March, A. D. 1902, and for some time prior thereto, was the owner of premises known as 1805 Fourteenth street, northwest, in the city of Washington, in the District of Columbia; that prior to said 15th day of March the defendant had leased the same to Barnet H. Swart, and that the said Barnet H. Swart was on the said last mentioned day, and for some time prior thereto, occupying the same under the said lease, and conducting thereon the flour and feed business; that upon said premises and in the rear thereof there was a stable opening into an alley, which said stable abutted upon said alley; that said Barnet H. Swart used said stable for the accommodation of his horses and wagon, and that his agents and servants were accustomed to pass to and fro, in and upon said alley, for the purpose of gaining access and departing from said stable; that the plaintiff on the said 15th day of March, and prior thereto, was employed by the said Barnet H. Swart as manager and solicitor of aforesaid business, and in the performance of his duties as such he was compelled to be in and upon said premises and in and upon said alley in proximity to said stable; that prior to said 15th day of March, complaint was made to the said defendant of the condition of the roof of said premises, and he was requested to repair the same, and that a few days prior to the said 15th day of March the defendant sent a certain Charles A. Leaman to said premises to repair said roof; that on the said 15th day of March said roof having been repaired by said Leaman the defendant appeared upon said premises with the said Leaman and with a certain Mr. Limpert, and requested permission to go upon the roof of said premises where said repairing had been done, which permission was given to him by William Ray, an agent of the said Barnet H. Swart; that the defendant accompanied by the — Leaman and Limpert went upon the said roof and directed them to remove certain debris lying upon said roof, consisting, among other things, of a num-

Digitized by Google

ber of heavy boards about six feet long and four feet wide, covered with tin and weighing about five hundred pounds, which had been created in the repair of said roof and left thereon; that later in the said day the said Leaman and Limpert by way of removing said boards and tin shoved the same from said roof down upon the plaintiff, who in the proper performance of his duties as manager for the said Barnet H. Swart was then in and upon said alley; that the plaintiff was not aware of the presence of the said Leaman and Limpert upon said roof, and that the said Leaman and Limpert gave no warning before shoving said board and tin from said roof, and that the said Leaman and Limpert could have seen the plaintiff before they shoved said tin and boards from said roof had they looked; that the plaintiff's foot was fractured by the said tin and boards striking him as aforesaid and his head lacerated and other damage done him. The defendant offered evidence tending to show that he contracted with the said Leaman for putting a sky-light on said roof at a cost of six dollars, and that prior to the said 15th day of March he had settled with the said Leaman, who had completed his contract with him; that thereafter on the morning of the 15th Leaman came to the defendant and said to him, 'I would like to have that material on the roof that was left there,' and the defendant said to him: 'You may;' that thereafter the said Leaman, together with the said Limpert, by way of removing said debris threw the same from the roof; that the defendant did not accompany them thereon and gave no directions at any time as to the removal of said debris, and did not know that the accident had happened until several days thereafter; that said debris weighed about fifty pounds and was removed in a one horse dayton wagon. This was the substance of all the evidence offered."

No special instructions were asked by either party, and this evidence was submitted to the jury upon a charge, to which the plaintiff excepted specially. A verdict having been returned for the defendant, the plaintiff has appealed from the judgment entered thereon.

The evidence recited does not warrant an inference that Leaman's contract to put in the skylight covered also the removal of the debris occasioned by its construction. Nor does it appear therefrom that the defendant was under any obligation to his tenant, or to any one else, to remove from the roof of the building the old material left there after the completion of the work contracted for. Hence no question arose as to the liability of defendant, as the owner of the building, for injuries resulting directly from acts which the contractor was authorized or required to do, as in Water Co. v. Ware, 16 Wall. 566, 576, and other like cases.

But two material issues were presented by the evidence. The first was, whether, after the completion of his contract for the construction of the skylight Leaman had undertaken the removal of the old material at the request, or in obedience to the directions of the defendant. If so, the jury were correctly charged that he was acting as the agent or employee of the defendant in such manner as to render the latter liable for his negligent performance, whether or not he had himself been present and in actual direction of the work.

The second was whether Leaman's contract having been completely performed, he became the owner of the old material by gift of the defendant, and in its removal acted for himself alone without any direction from the defendant. If they should so find from the evidence, then the jury were properly instructed that the defendant would not be liable for Leaman's negligence in removing his own property in his own way.

Had the gift to Leaman been coupled with the requirement of removal, then defendant might have been liable for his acts. Burke v. Shaw, 59 Miss. 443. But there is nothing in the evidence warranting the application of the principle of that case, by way of instruction to the jury, and there is no occasion either to affirm or deny it.

Having found no error in the charge of the court, the judgment must be affirmed with costs; and it is so ordered.

Affirmed.

WILSON GRAY HAWLEY, APPELLANT,

v.

COLUMBIA RAILWAY COMPANY.

NEGLIGENCE; CONTRIBUTORY NEGLIGENCE; DIRECTING VERDICT.

1. The contributory negligence of a person injured will not defeat a recovery if the defendant by reasonable care and prudence might have avoided the consequence of such contributory negligence.
2. Plaintiff, while seeking to board a car of an electric street railway company at one of its regular stopping places, was struck by a car of another company (the defendant). At the point of the accident the tracks of the two companies were distant from each other four feet and ten inches; but when there was a car on each track the space between them was only sixteen or eighteen inches. It appeared from the testimony for plaintiff that the motorman on defendant's car was not looking ahead and had hold neither of the controller nor of the brake, but was leaning over engaged in pulling up the fender on his car. *Held*, that the case was one falling within the rule above stated and was one proper to be submitted to the jury, and a judgment for defendant upon a verdict directed by the trial court on the ground that plaintiff was guilty of contributory negligence reversed, distinguishing Chunn v. Railway Co., 32 Wash. Law Rep. 344.

No. 1424. Decided February 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,293, entered upon a verdict directed by the court in an action to recover for personal injuries. Reversed.

Mr. George E. Hamilton and *Mr. M. J. Colbert* for the appellant.

Mr. C. C. Cole and *Mr. R. S. Huidekoper* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit instituted in the Supreme Court of the District by the appellant here as plaintiff to recover compensation for personal injuries sustained by him in consequence of being struck near the intersection of Fourteenth street and New York avenue in this city by a car of the appellee company, through the alleged negligence of the employees of this company.

The appellant was seeking to board a car of the Capital Traction Company, which was

Digitized by Google

about to turn from New York avenue into Fourteenth street to go north on the latter street, and which at that point came to a stop in order to discharge and receive passengers. He had come out into the street from the sidewalk on the southern side, and had taken his station between the south track of the Capital Traction Company and the north track of the Columbia Railway Company, the outer rails of which are here 4 feet and 10 inches distant from each other. Notwithstanding that when two cars come abreast of each other at this point the space is very narrow, the place, under the usage of the Capital Traction Company and the municipal regulations of the District of Columbia, had become a usual place for the stoppage of the cars of this latter company for the purpose indicated, but not for the cars of the Columbia Railway Company, of which the stopping place was on the east side of Fourteenth street. The circumstances of the accident, which resulted in the injury to the appellant, are thus stated by the motorman of the car which he was seeking to board:

"I got to Fourteenth street and New York avenue on that day at 5.28 p.m., and stopped to take on passengers. As I stopped there was a Columbia car just passing over the Metropolitan tracks on Fourteenth street, going west. The motorman of that car was busy hooking up his fender, and he struck Hawley. He did not have hold of the controller at all, and I hardly think he had hold of the brake. No, he did not have hold of the brake. He was leaning over the dash-board, pulling up the fender, and had one hand resting on the dash and the other one hold of the fender. He pulled up the fender with one hand and hooked it with the other, and by that time he looked up and saw Hawley, and almost at the same time he struck him. When Mr. Hawley was hit he was standing between the Capital Traction track and the Columbia track. He was looking west and walking west. My car was full of people."

And Hawley himself testified about the matter in these words:

"The Fourteenth street car was pretty well crowded, but I did not notice any one standing on the running board. The Fourteenth street car had stopped before I was struck. It had stopped possibly a few seconds, and I was walking along looking for a seat, or rather a place to get on, when I was hit. I had not taken hold of the upright, or stepped upon the running board, but was in the act of raising my hand to grab hold of the upright when I was hit. I had not stepped up at all—I was just in the act."

At the trial, upon the conclusion of the plaintiff's testimony, the defendant, adducing no testimony on its own behalf, moved the court to direct a verdict in its favor, it is understood, on the ground of contributory negligence on the part of the plaintiff; and the motion was allowed, and a verdict directed for the defendant, upon which there was judgment.

From this judgment the plaintiff has appealed.

That there was ample evidence to go to the jury on the question of the defendant's negligence, if that were the only issue in the case, is too clear to need elaboration. What we have already cited was amply sufficient for the purpose. But it is upon the supposed showing of contributory negligence by the plaintiff on his own part that it is sought to sustain the ruling of the trial court. And the case of Chunn v. City and Suburban Railway Company, 23 App. D. C. 551: 32 Wash. Law Rep. 344, in which we probably carried the doctrine of contributory negligence to its extreme limit, so far as it removed the cause from the consideration of the jury, is cited in support of the contention.

We think there were some important distinctions between the Chunn case and that now before us. In the Chunn case it was not at all certain that the injured person had the right to stand or be in the place where she was injured—some planks laid down between the two tracks of the defendant company's railroad, and apparently only used as a platform by a kind of sufferance or tolerance of the employees of the company. But principally it appeared that there was amply sufficient distance, 7 feet and 10 inches, between the nearest rails of the two tracks, leaving 3 feet and 6 inches by actual measurement between two cars standing abreast on the two tracks—a space abundantly sufficient for a person proposing to board a passing car to stand on and from which he might enter in safety, if, as the testimony was, he was careful to see what he was doing. It was only because the plaintiff in that case was careless in what she was doing that she went beyond the limit of safety and was injured.

In the present case the plaintiff was where he was entitled to be. It was the usual place for passengers to alight from and to enter the cars of the Capital Traction Company at that point. But the place was of very much smaller dimensions. The outer rails of the tracks of the two railway companies were only 4 feet and 10 inches distant from each other, and the testimony is that when the cars stand abreast of each other there, there is only about 16 or 18 inches between them, and "that unless a man is standing sideways he is very apt to be hit with cars on both sides of him." If in such a situation a high degree of care was required of the appellant, so was there a commensurate degree of care required of the appellee, and it was not competent for the latter to run the former down and maim or kill him, when the motorman, with the exercise of reasonable care and prudence, could have guarded against the result of the plaintiff's contributory negligence, if such there was.

We are of opinion that the case before us falls within the rule laid down by the Supreme Court of the United States in the case of Grand Trunk Railway Co. v. Ives, 144 U. S. 408, and in the case of Inland and Seaboard Coasting Co. v. Tolson, 139 U. S. 551, wherein it was held that the contributory negligence of a person injured will not defeat his action if the defendant by reasonable care and prudence might have avoided the consequence of such contributory negligence. Here the motorman of the defendant company had ample opportunity to guard against the accident if he had been using even ordinary care and prudence and attending to the proper performance of his duty, which he evidently was not doing, if the testimony of the plaintiff's witnesses is to stand unimpeached. At one of the most dangerous crossings in the

Digitized by Google

city of Washington he was not looking ahead, as he should have looked, and he had abandoned all control both of the controller and of the brake of the car.

It will not do in a case of this kind to hold the plaintiff as the sole author of his own misfortune, when the defendant, by the use even of ordinary care and prudence, could have avoided the accident, even after the contributory negligence had supervened.

We are of opinion that the case was one proper to be submitted to a jury under suitable instructions, and that it was error to withdraw it from their consideration.

The judgment appealed from must be reversed, with costs; and the cause will be remanded with directions to vacate the judgment and the verdict, and to award a new trial. And it is so ordered.

Reversed.

NEELY ELECTRIC CONSTRUCTION AND SUPPLY COMPANY, APPELLANT,

v.

HENRY C. BROWNING ET AL.

APPEALS; TRANSCRIPT OF RECORD; APPEAL DISMISSED.

1. Where, on appeal from a judgment rendered by the trial court, sitting without a jury, the record discloses neither bill of exceptions, nor requests for finding of ultimate facts, nor agreed statement of facts signed by the parties or by their attorneys, but merely a certification by the trial justice of the evidence produced before him and the judgment thereon, the appeal will be dismissed.
2. Where a trial by jury has been waived a question of fact determined by the trial court is not reviewable on appeal.

No. 1427. Decided February 7, 1905.

APPEAL by petitioner from a judgment of the Supreme Court of the District of Columbia, No. 45,682, dismissing a petition to have certain property levied upon by the marshal declared the property of petitioner. Dismissed.

Mr. James B. Archer, Jr., and *Mr. D. W. Baker* for the appellant.

Mr. A. A. Hoehling, for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment rendered after trial before a justice of the Supreme Court of the District of Columbia, sitting without a jury, in favor of the appellees, dismissing a petition filed by the appellant, that certain property levied upon by the marshal of the District of Columbia, under an execution issued after judgment had been recovered by these appellees against one Charles H. Neely, be declared to be its property.

To sustain its claim of title the appellant gave evidence and testimony, and in turn the appellees gave testimony and evidence to maintain the issue on their part.

In view of the disposition we decide to make of the case it becomes unnecessary to set forth or refer to the nature and extent of the proofs adduced.

The appellees moved to dismiss the appeal, or, in the alternative, to affirm the judgment from which the appeal was taken. The consideration of that motion was postponed to the time of the hearing of the appeal.

After careful consideration we have decided that the appeal can be best disposed of by taking up and deciding the motion.

Appellees based their motion upon certain grounds which are thus set forth:

"No exceptions whatever were taken by appellant to any of the rulings of the trial court; no requests for findings of ultimate facts were submitted upon which an exception could have been reserved upon refusal by the court to so find, and no bill of exceptions of any kind is contained in the record—the transcript filed being a mere certification by the trial justice of the evidence produced before him and the judgment entered thereon, as will appear from a mere inspection of said transcript."

An examination of the record discloses that this statement is correct in fact, and if such facts are sufficient in law to warrant the dismissal of the appeal, or an affirmance of the judgment, there exists no good reason why we should not so dispose of it.

As has been stated, the record discloses neither bill of exception nor requests for finding of ultimate facts, nor agreed statement of facts signed by the parties or by their attorneys. It contains what is termed a "Certified Statement of Testimony and Proceedings," which is certified by the trial judge in the following words: "I certify that the foregoing is an accurate statement of the testimony and proceedings in the cause." Such report of the trial judge is not the equivalent of a bill of exceptions, special verdict, or an agreed statement of facts. Suydam v. Williamson, 20 How. 427.

In Trust Co. v. New Mexico, 183 U. S. 535, at page 540, the court said: "An agreed statement of facts may be the equivalent of a special verdict or a finding of facts upon which a reviewing court may declare the applicable law, if such agreed statement is of ultimate facts; but if it be merely a recital of testimony, or evidential fact, it brings nothing before an appellate court for consideration." . . . "The certified statement of facts is insufficient, and presents nothing for examination."

But it is urged on behalf of the appellant that heretofore this court has been lenient in taking jurisdiction of cases where the records were faulty, and reference is made to Wilkins & Co. v. Hillman, 8 App. D. C. 469: 24 Wash. Law Rep. 300. In that case it was expressly stated that there were special circumstances which induced the court to take jurisdiction, notwithstanding that it was there stated that the proper mode for bringing up cases of this kind for review was by bill of exceptions. It was plainly said, at page 476, that "our decision in this instance is not to be drawn into a precedent for the government of future cases." It is neither fair to the trial court nor to litigants that plain and well-settled rules of practice should be ignored. The power to do so, conceding it to exist in the appellate court, should only be exercised, if at all, in extreme cases where otherwise there would be a plain miscarriage of justice.

No such reason is disclosed in the case at bar.

No good purpose would be subserved by attempting to go into the consideration of the testimony, for this court has held in the recent

Digitized by Google

case of Shelley v. Westcott, 23 App. D. C. 135: 32 Wash. Law Rep. 68, that in a case where a trial by jury has been waived a question of fact determined by the trial court is not reviewable by this court. It follows that any such consideration of the case would inevitably compel us to affirm the judgment of the trial court.

We must hold that this case is not properly before this court for review.

The appeal must be dismissed, with costs. And it is so ordered.

BENJAMIN KLOPFER, APPELLANT,
v.
THE DISTRICT OF COLUMBIA.

APPELLATE PRACTICE; TRANSCRIPT OF RECORD; DEFECTIVE SIDEWALK; MASTER AND SERVANT; SPECIAL POLICEMAN.

1. In order that an appellate tribunal may pass intelligently upon the ruling of a trial court, the record must give, and purport to give, the substance of all the testimony bearing upon such ruling.
2. A record, although not expressly purporting to give all the testimony in the case, held sufficient where, after detailing the testimony of witnesses on both sides, it stated that "counsel for both plaintiff and defendant announced that they had no further testimony to offer, and rested their case," and it was not contended that any substantial testimony was omitted.
3. The fact that a watchman, employed by private persons at their own expense to guard their property at night, is, to enable him to perform his duties in that regard and for that purpose alone, commissioned as a private on the police force, but without compensation from the District, will not of itself defeat his right to recover for injuries sustained by him by stepping into a hole in the sidewalk negligently permitted to exist after notice thereof to the municipal authorities.

No. 1446. Decided February 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,243, entered upon a verdict directed by the court in an action for personal injuries. Reversed.

Mr. C. H. Merrillat and *Mr. W. E. Ambrose* for the appellant.

Mr. A. B. Duvall and *Mr. E. H. Thomas* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

The appellant is or was a private watchman by night, commissioned as a private in the Metropolitan Police force, but without compensation from the District of Columbia, and employed at their own charge and cost by private persons to guard their private property. While so employed, a little before midnight on the evening of February 16, 1903, he was injured by stepping into a hole in the sidewalk of C street northwest, near Twelfth street, which had existed for several months, and which had been caused by bricks becoming loose and missing. The hole was about the depth of a brick and the size of it was from four to seven or eight bricks. On the evening in question the hole was covered with snow; and it was by stepping on a loose brick on the edge of it, which turned over, that the appellant was injured. He himself had noticed the defective condition of the street for several months prior to the accident, and had reported it to the nearest station to which he was in the habit of reporting. He knew that there was a hole about that place; but at the time of the accident it was so covered with snow that he could not then see it.

Under these circumstances and conditions, the appellant as plaintiff entered suit in the Supreme Court of the District against the District of Columbia, on the ground of the alleged negligence by the latter, to recover compensation for the injuries sustained by him. At the trial he and other witnesses on his behalf testified substantially to the facts stated. There was testimony also on behalf of the defendant that some workmen for the District had repaired one or two holes at the place designated about three weeks or upwards before the time of the accident to the plaintiff. At the conclusion of the testimony, counsel for the defendant moved the court to direct a verdict in favor of the District, on the ground that the accident was the result of the plaintiff's own negligence; and the court sustained the motion, instructed the jury to return a verdict for the defendant, and thereupon entered judgment forthwith. From this judgment the plaintiff has appealed.

A preliminary question has been raised here by the appellee, on whose behalf it is contended that the record does not purport to contain the whole testimony in the case, or the substance of it; and therefore that nothing remains to this court but to affirm the judgment of the trial court. It does not seem that this criticism upon the contents of the record is wholly unfounded; and we have repeatedly had occasion to animadvert upon the loose and insufficient manner in which bills of exception have been prepared when it is the intention of parties to state in them the substance of the whole testimony, and yet fail in specific terms so to do. It is elementary law that, in order that an appellate tribunal may pass intelligently upon the ruling of a trial court, the record must give and must purport to give the substance of all the testimony bearing upon such ruling; and when the ruling is upon the whole testimony, as when a verdict is directed either for the plaintiff or for the defendant, the record must give and must purport to give the substance of all the testimony—although, of course, testimony not bearing upon the ruling, as, for example, medical testimony as to the nature and extent of a plaintiff's injuries, need not be given.

But, although the record in the present case is not free from just criticism in this regard, yet we think, in view of its general tenor, that it should be accepted as sufficient. It states, after the detail of the testimony of witnesses on both sides, that "counsel for both plaintiff and defendant announced that they had no further testimony to offer, and rested their case;" and it is not contended as a matter of fact, on behalf of the appellee, that any substantial testimony needed for the disposition of the case has been omitted.

The motion of the defendant on which the jury was peremptorily requested and instructed to render a verdict in favor of the District of Columbia was expressly based on the fact that the plaintiff was a policeman in the employment of the District of Columbia, and therefore, as we infer, presumably not entitled to recover for any negligence on the part of the municipality. But we do not so understand the

Digitized by Google

law to be; and we think that there was error in the ruling of the trial court in this regard.

The plaintiff was a policeman, it is true, and may perhaps be regarded as having been in the employment of the District of Columbia, and subject to all the rules and regulations which govern the police force of the District, so far as they are applicable to his case. But it is very plain that he was only a special policeman for a special purpose, and not subject to the performance of the general duties of a policeman, in the ordinary sense of that term. And yet it is argued in all seriousness in this case that "it was the duty of the plaintiff to observe the condition of this sidewalk, which was on his beat, and to see that no defects or obstructions were suffered to remain thereon, and to remove such obstruction or defect at once, and, if necessary, display a lantern from such guard as he may provide, and to make an immediate report to the lieutenant of police, to be forwarded to the police headquarters."

It is very clear that there was no such duty imposed upon the plaintiff. He was employed for one sole purpose, that of guarding from depredation the property of those who paid him for his services. For this purpose alone, and to enable him to perform his duty in that regard, he received a commission from the District of Columbia as policeman. To say that he was required to keep in repair the streets within his beat, or rather within the district to which his employment was restricted, we would be compelled to regard as an absurdity. Whatever duty there was upon him in the premises with regard to the condition of the sidewalk he fully performed it when he reported that condition to the station master at the next police station. Thereafter he was as much entitled to recover for any injuries that might be suffered by him as any other citizen would be. Nor would there seem to be any reason why the law between employer and employee should not be applied here, which requires that the employer should provide a reasonably safe place and reasonably safe appliances for the performance by the employee of the duties of his employment.

There is no place here for the application of the doctrine that an employee must take the risk of his employment and the risk of the negligence of his fellow servants. There is presented simply the case of one injured by the negligence of the municipality after ample notice to the municipality of the existence of the dangerous thing which caused the injury. There is no case of coemployment in the sense of the law to relieve the employer from liability. Kimball v. Boston, 1 Allen, 417; Turner v. Indianapolis, 96 Ind. 52; American and English Encyclopædia of Law, title, Master and Servant, second edition, vol. 20, p. 91, and notes.

We are clearly of opinion that this case should have been submitted to a jury, and that it was error to withdraw it from them.

The judgment appealed from will therefore be reversed, with costs, and the cause will be remanded to the Supreme Court of the District of Columbia, with directions to vacate the verdict and judgment therein entered, and to award a new trial. And it is so ordered.

Reversed.

United States Supreme Court.

MARTHA I. HUNT, PLAINTIFF IN ERROR, v. SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY.

INSURANCE—CONDITION AGAINST CHATTEL MORTGAGE.

A condition in a policy of fire insurance for the unconditional and sole ownership of the property by the insured, and for the non-existence of any chattel mortgage thereon, was broken where certain trust deeds of the property had been executed to secure payment of money, whose legal effect is practically the same as that of a chattel mortgage with power of sale.—Advance Sheets, U. S. S. C., p. 179.

No. 65.

Argued December 1, 2, 1904. Decided December 19, 1904.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District in favor of defendant in an action on a policy of insurance. Affirmed.

See same case below, 30 Wash. Law Rep. 636.

Statement by Mr. Justice Brown:

This was an action to recover on a policy of insurance upon household furniture and ornaments.

Defense: That it was provided that the policy should be void if the interest of the insured was other than the unconditional and sole ownership of the property insured, or if the "said property should be or become encumbered by a chattel mortgage," when in fact it was subject, at the time the policy was written, to three trust deeds to secure the payment of various sums of money. Plaintiff demurred to the pleas setting up this defense. The court overruled the demurrer, entered judgment for the defendant, which was affirmed by the Court of Appeals. 20 App. D. C. 48: 30 Wash. Law Rep. 636.

Mr. John C. Gittings and *Mr. D. W. Baker* for plaintiff in error.

Mr. Andrew B. Duvall for defendant in error.

Mr. Justice BROWN delivered the opinion of the Court:

The sole question presented by the record in this case is whether the provision in the policy for the unconditional ownership of the property by the plaintiff, and for the non-existence of any chattel mortgage thereon, was broken by certain trust deeds to secure the payment of money in each case.

Plaintiff relies upon the familiar principle of law that the conditions of a policy of insurance, prepared, as they are, by the company, and virtually thrust upon the insured, frequently without his knowledge, must be construed strictly, and, while the legal effect of a chattel mortgage and of a deed of trust to secure the payment of money may be practically the same, they are in law different instruments; and that a condition against one is not broken by the existence of the other. We recognize the rule laid down by this court in Thompson v. Phenix Ins. Co., 136 U. S. 287, 34 L. ed. 408, 10 Sup. Ct. Rep. 1019, that in case of attempted forfeiture, if the policy be fairly susceptible of two constructions, the one will be adopted which is more

Digitized by Google

favorable to the insured. This rule was reiterated in McMaster v. New York L. Ins. Co., 183 U. S. 25, 46 L. ed. 64, 22 Sup. Ct. Rep. 10, but we can not recognize it as applicable to this case.

A deed of trust and chattel mortgage with power of sale are practically one and the same instrument as understood in this District. In the language of Mr. Justice Morris, in speaking of mortgages of real estate in Middleton v. Parke, 3 App. D. C. 149:

"The deed of trust is the only form of mortgage that has been in general use in the District of Columbia for many years. The common-law mortgage is practically unknown with us; and everyone understands that, when a mortgage of real estate here is spoken of, the deed of trust is what is intended. . . . The deed of trust is here used as the equivalent of a mortgage; and so the term is universally used by the community. Indeed, while a mortgage is not necessarily, perhaps, a deed of trust, a deed of trust to secure the loan of money is necessarily a mortgage."

It was said by this court in Shillaber v. Robinson, 97 U. S. 68-78, 24 L. ed. 967-970, that, "if there is a power of sale, whether in the creditor or in some third person to whom the conveyance is made for that purpose, it is still in effect a mortgage, though in form a deed a trust; and may be foreclosed by sale in pursuance of the terms in which the power is conferred, or by suit in chancery."

The legal effect of the two instruments has been recognized as practically the same in several cases in this and other courts. Platt v. Union P. R. Co., 99 U. S. 48-57, 25 L. ed. 424-427; Palmer v. Gurnsey, 7 Wend. 248; Eaton v. Whiting, 3 Pick. 484; Wheeler & W. Mfg. Co. v. Howard, 28 Fed. 741; Bartlett v. Teah, 1 McCrary, 176, 1 Fed. 768; Southern P. R. Co. v. Doyle, 8 Sawy. 60, 11 Fed. 253; McLane v. Paschal, 47 Tex. 365.

There may be cases under particular statutes recognizing a difference between them in reference to the application of the recording laws, as appears to be the case in Maryland (Charles v. Clagett, 3 Md. 82), but in their essential features and in their methods of enforcement they are practically identical. Both are transfers conditioned upon the payment of a sum of money; both are enforceable in the same manner, and the difference between them is one of name rather than substance. The provision in the policy is one for the protection of the insurer, who is entitled, if he insists upon it in his questions, to be apprised of any fact which qualifies or limits the interest of the insured in the property, and would naturally tend to diminish the precautions he might take against its destruction by fire.

In passing upon the identity of the two instruments in this case we may properly refer to the further provision of the policy that the interest of the insured must be an unconditional and sole ownership. While the breach of this condition is not specifically urged in the briefs, we may treat it as explanatory of the other condition against the existence of a chattel mortgage. The company evidently intended by this provision to protect itself against conditional transfers of every kind. The contract of the company is a personal one with the insured, and it is not bound to accept any other person to whom the latter may transfer the property.

The conditions of the policy in this case were broken by the trust deeds, and the judgment of the court below is, therefore, affirmed.

ASSIGNMENTS—Check on Assignment.—The giving of a check directing payment of a certain sum to the payee, or order, does not, without presentation, constitute an assignment. Love v. Ardmore Stock Exch., Ind. Ter., 82 S. W. Rep. 721.

BANKS AND BANKING—Check on Deposit.—A writ of garnishment, served on a bank in an action against a depositor, creates a lien on the deposit superior to that of a holder of a prior unpresented check. Love v. Ardmore Stock Exch., Ind. Ter., 82 S. W. Rep. 721.

LANDLORD AND TENANT—Contract, sublease.—Where there was no prohibition against subleasing, the consent of the original lessor was not necessary to entitle defendant to sublet. Schenkel v. Lischinsky, 90 N. Y. Supp. 300.

HUSBAND AND WIFE—Liability of Husband for Medical Services.—Husband's liability for medical services rendered and medicines furnished wife living apart from him depends on whether separation is due to his fault. Wolf v. Schulman, 90 N. Y. Supp. 363.

CONTRIBUTION — Claim of Executor.—An executor held not to have a right of action against the distributees for contributions to pay counsel fees after final settlement of accounts and distribution. Blair v. Blair, 90 N. Y. Supp. 190.

THE truth of the following is vouched for by a Michigan correspondent, says Law Notes: An Irish drayman in a small village in Michigan was elected constable. The morning after election, while doing his customary business with a pair of old horses that had seen many better days, and with a long stick for a whip jabbing first one and then the other, he was heard to say: "Git up here, git up, yez lazy ould crow baits, git up. I niver seed the like of yez before. I'll have yez arrested for resisting an officer of the la."

A WESTERN judge recently sentenced a man to imprisonment for life. Before removal from the court of the prisoner he exclaimed that the judge was no gentleman. The indignant jurist promptly added two years to the sentence.

Digitized by Google

MUNICIPAL CORPORATIONS.—Wrongful Discharge of Policeman.—A discharge from the police force, without giving the policeman an opportunity to be heard in his own defense, is unwarranted. City of Chicago v. People, Ill., 71 N. E. Rep. 816.

Washington College of Law,

1403 New York Ave. N. W.

Ninth year opens **Monday, October 3, at 7 p. m.**, with an introductory lecture, to which the public is cordially invited.

Three years' course leading to degree of LL. B. Post-graduate courses of one year leading to degree of LL. M.

Full corps of eighteen lecturers and professors. Admits as students women and men properly qualified. Lectures between 6.30 and 9 p. m. Tuition, $50 a year.

For year books or further information apply to the Dean.

E. S. MUSSEY, LL. M.,

'Phone East 334-M. 1649 416 Fifth St. N. W.

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1684 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Thos. J. Mackey, Solicitor

In the Supreme Court of the District of Columbia.
Annie M. Porter v. Ellis B. Porter.
No. 25,174. Equity Docket No. 56.

The object of this suit is to obtain a divorce on the ground of desertion and non-support, provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

Legal Notices.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Susan E. Detrick, Deceased.
No. 12,736. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edward H. Thomas, executor, it is ordered this 7th day of March, A. D. 1905, that notice be and hereby is given to **Louis Edward Wright**, and to all others concerned, to appear in said court on **Wednesday, the 19th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-3t

Lambert & Baker, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Margaret Burkhard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. FRANCESCA LITZ, 241 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,574. Administration. 10-3t

Daniel W. O'Donoghue, Solicitor

In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

mar. 10-17, apr. 7-14, may 12-19

OFFICIAL edition, United States Bankruptcy Law of July 1, 1898, and Amendments of February 5, 1903, with marginal notes and full Index. General Orders and Forms adopted by the United States Supreme Court, November 28, 1898. Price, paper, 50c; cloth, $1, delivered by mail. The only complete edition. THE LAW REPORTER CO., Printers, Stationers, and wholesale and retail dealers in Bankruptcy Supplies, Washington, D. C. M. W. Moore, Manager. Phone Main 828.

Digitized by Google

Legal Notices.

Jas. F. Bundy, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Henry W. White**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. BENJAMIN F. MORRISON, Bureau of Education. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,728. Administration. 10-8t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Florida, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Augusta Maria Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of March, 1905. FRANK T. RAWLINGS, 1505 Pa. ave. N. W., Wash., D. C.; WM. HENRY YOUNG, Athens, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,757. Administration. 10-8t

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Flannery**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. MICHAEL A. LYNCH, 219 G st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,559. Administration. 10-8t.

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-8t

Legal Notices.

F. R. Keys, Solicitor

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

Martha D. Schlosser v. Robert F. Schlosser. Equity, No. 22,944.

On motion of the plaintiff, by F. R. Keys, her solicitor, it is ordered that the defendant, Robert F. Schlosser, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 10-8t

George P. Hoover, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William O. Beckenbaugh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of November, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1904. MARGARET A. BECKENBAUGH, 2319 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,516. Administration. 10-8t

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Schu**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. CHARLES SCHU, 1367 Fla. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,591. Administration. 10-8t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Dadmun**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. ELIZABETH WILSON, 606 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,710. Administration. 10-8t

SECOND INSERTION.

John Raum, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of Pennsylvania, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily S. M. Chisolm**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of February, 1905. HENRY CLAY CHISOLM, WM. WALLACE CHISOLM, Huntingdon, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,708. Adm. 9-3t

Digitized by Google

Legal Notices.

Chas. W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick Folliard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1905. NORA FOLLIARD, 1101 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,665. Administration. 9-3t

In the Supreme Court of the District of Columbia.
William H. Hooke v. Sydney F. Marshall, Admr., et al.
Equity No. 23,455.

Sydney F. Marshall and Charles A. Douglass, trustees, having reported an offer from Alice E. Birtwell of $850 for sublot 34, in square 1095, in the city of Washington, District of Columbia, said offer, however, subject to the payment of 3 per cent commission, as set forth in said report, it it therefore, this 2d day of March, 1905, ordered that said offer be accepted and the sale of said lot ratified and confirmed on the **3d day of April, 1905**, unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 9-3t

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John J. Halsted**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. PENNINGTON HALSTED, 49 Wall street, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,748. Administration. 9-3t

S. Herbert Giesy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William Hogan, Deceased.
No. 12,733. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry C. Birge and Lynndors S. Lucas, it is ordered this 2d day of March, A. D. 1905, that notice be and hereby is given to **Margaret Brisbane, Bertha M. Schlesinger, Margaret B. Schlesinger, and William Strong Hogan**, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel L. Kelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **1st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. JULIA S. McALLISTER, 940 K st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,729. Administration. 9-3t

Legal Notices.

Leckie & Fulton and Jos. W. Cox, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John M. Mitchell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. EMMA F. MITCHELL, 729 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,707. Administration. 9-3t

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Conner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. MARY KIRKPATRICK, 1115 23d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,738. Administration. 9-3t

Frank J. Wissner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Zachary Boteler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. HARRY W. BOTELER, 3110 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,690. Administration. 9-3t

George E. Fleming, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Harry U. Walton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. 9-3t

Coldren & Fenning, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Frame**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. WILLIAM HAMILTON, Produce Exchange, New York. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,685. Administration. 9-3t

Digitized by Google

Legal Notices.

William L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Pins Stang, Deceased.
No. 12,722. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Alexander Ebert, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Franz Anton Stang, Carl Stang**, brothers, and **Anna Stang** and (?) **Stang**, sisters of deceased, living in Koenigheim, near Tauberbischofsheim, Baden, Germany, and other unknown heirs, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

Milton Strasburger, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Deborah E. Whitmore, Deceased.
No. 12,708.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Scaggs, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Louisa Westerfield Vreeland** (non compos mentis), of Newark, New Jersey; **Cecilia Shelley**, of Danville, Illinois; **Maud V. Hart**, of New York City, New York; **Walter Hart**, of Baltimore, Maryland; **Mabel Schilling**, of Baltimore, Maryland; **John Elmer Hart** (minor), of New York City, New York, and **Annie Steinmetz**, of Dayton, Ohio, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

THIRD INSERTION.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Frances A. Daly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of February, 1905. MARY A. DALY, 17 W. Franklin st., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,727. Administration. 8-3t

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Eliza Tinney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of February, 1905. WILLIAM J. WILKINS, 114 Fenwick st., Ivy City, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,680. Adm. 8-3t

Legal Notices

Thomas Walker, Solicitor

[Filed Feb. 17, 1905—J. R. Young, Clerk.]
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Moses A. Campbell et al. v. Thomas E. Campbell et al.
Equity No. 24,669. Docket No. 55.

Upon consideration of the report of Thomas Walker, trustee, filed herein, it is, this 17th day of February, A. D. 1905, adjudged and ordered by the court, that the sale thereby reported of the following real estate situate in city of Washington, in the District of Columbia, and known as lot 26 in W. B. Todd's subdivision of original lot 9 in square 642, being premises No. 626 Delaware Ave. S. W., to Thomas P. Brown, for $430, be ratified and confirmed unless cause to the contrary be shown on or before the **20th day of March, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 8-3t

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.
Jennie R. Willoughby, Complainant, v. Edgewood Syndicate et al., Defendants.
Equity No. 24,343.

The object of this suit is to obtain the partition, by sale, among the parties to this cause, of block two (2), in Catherine Chase and others' subdivision of part of a tract of land called "Metropolis View," now called "Edgewood," as the same appears of record in the office of the surveyor of the District of Columbia, in County Book No. 7, page 98. On motion of the complainant, it is, this 17th day of February, A. D. 1905, ordered that the defendants, **Frank M. Green, E. F. Conant, Frederick O. Fish, J. M. Hawley, Caroline G. Hawley, and C. C. Jones**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default, said publication to be in The Washington Law Reporter and the Evening Star once a week for three successive weeks. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-3t

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William C. Dix, Deceased.
No. 12,712. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Frank P. Davis, it is ordered this 24th day of February, A.D. 1905, that notice be and hereby is given to **Catherine Gillespie, Sarah D. Aikins, Robert W. Dix, Levin A. Dix, Isaac Dix, George H. Dix, William H. Singleton, and A. D. Singleton**, and to all others concerned, to appear in said court on **Friday, the 31st day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia.
Estate of George Mack, Deceased.
No. 11,450. Adm. Doc. 30.

On motion, it is by the court this 24th day of February, A. D. 1905, ordered, that the sales made and reported by Albert F. Fox and B. Elwood Kelley, trustees and executors under the will of George Mack, deceased, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the **24th day of March** next. Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said last named day. The report states that premises No. 105 O street N. W. sold for $2,125, and premises No. 107 O street N. W., and rear frame, for $2,475. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

Digitized by Google

Legal Notices.

William B. Reilly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Frederick S. Clements**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of January, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1905. THERESA E. CLEMENTS, 1131 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,617. Administration. 8-3t

J. J. Darlington, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louis D. Wine**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1905. CLARENCE B. RHEEM, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,725. Administration. 8-3t

Chas. F. Benjamin, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Solomon Carr**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **17th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of February, 1905. CHAS. F. BENJAMIN, 504 11th st. N. W.; ED. MANGUM, Kendall Green, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,658. Administration. 8-3t

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Reuben B. Detrick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of February, 1905. GEORGE W. F. SWARTZELL, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,549. Administration. 8-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **William L. Read**, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 17th day of March, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of February, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,788. Administration. 8-3t

Legal Notices.

Gittings & Chamberlin, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward G. Niles, Deceased.
No. 12,709. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Meredith Niles, it is ordered this 21st day of February, A. D. 1905, that notice be and hereby is given to **Alexander Bielaski, Catonsville, Md.; Agnes Sprague, 520 Main St., Brooklyn, N. Y.**, and to all others concerned, to appear in said court on **Monday, the 27th day of March, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

FOURTH INSERTION.

Walter C. Clephane, Solicitor
In the Supreme Court of the District of Columbia.
William S. Powell, Complainant, v. the Unknown Heirs, Alienees, or Devisees of Sarah Lingan, Anne Caldwell, John Bernard, and Jane Parrott, Defendants. In Equity. No. 25,135.

The object of this suit is to declare the title to original lot numbered twelve (12), and part of original lot numbered eleven (11), in square numbered one hundred and five (105), beginning for said part of original lot numbered eleven (11) at the northwest corner thereof, and running thence east on the north line of said lot sixty-one (61) feet, thence south twenty-five (25) feet nine (9) inches, thence west twenty (20) feet, thence north nine (9) inches, thence west forty-one (41) feet to the line of Nineteenth street west, and thence north on said street twenty-five (25) feet to the place of beginning, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Walter C. Clephane, his solicitor, it is this 14th day of February, 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of Sarah Lingan, Anne Caldwell, John Bernard, and Jane Parrott, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. YOUNG, Clerk, by F. E. Cunningham, Asst. Clerk. 7-4t

Geo. R. Linkins, Solicitor
In the Supreme Court of the District of Columbia,
Terrance J. McMahon, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Joseph Covachich and Thomas Dougherty, Defendants.
Equity No. 25,128. Docket No. 56.

The object of this suit is to establish in complainant a fee simple title by adverse possession to the north twenty (20) feet front on Third street, by full depth of original lot ten (10), in square five hundred and twenty-three (523), subject to an easement for alley purposes, over the rear five (5) feet thereof. On motion of the complainant, it is, this 15th day of February, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees, both mediate and immediate, of Joseph Covachich and Thomas Dougherty, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order, otherwise the cause will be proceeded with as in case of default. This order shall be published once a week for four successive weeks in The Washington Law Reporter before said return day, it appearing to the court, upon good cause shown, based upon the affidavit filed herein, that further publication is unnecessary. By the court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 7-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 11

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MARCH 17, 1905

CONTENTS.

Editorial 161
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Annie C. Guthrie, appellant, v. Jane E. Welch 162
The United States, ex relatione of Juan Rodriguez, appellant, v. John M. Boyer, commander, U. S. N., et al 164
Robert Jackson, appellant, v. George E. Emmons et al 165
Benjamin W. Guy, appellant, v. The District of Columbia 165
UNITED STATES SUPREME COURT:
William H. McCaffrey, Edward Quigley, et al., appellants, v. Lizzie C. Manogue, George W. Manogue, and Frank Foley 167
Legal Notices 171

Death of Hon. Charles C. Cole.

The members of the bar of the District were shocked to learn of the death of Hon. Charles C. Cole, which occurred at his home in this city on Friday morning, March 17, 1905. His illness had been of brief duration, and no serious result was apprehended; but sudden complications ensued and caused his death.

Judge Cole's death removes from the ranks of the District bar one of its most prominent members. His career in this District has been one of exceptional distinction. After serving with signal ability as United States attorney for the District of Columbia, he was, in February, 1893, appointed as an associate justice of the Supreme Court of the District, in succession to Mr. Justice Charles P. James. He presided, from time to time, in each of the several branches of that court, hearing and determining some of the most important cases brought before it, and earning for himself an enviable reputation as a judge. His service on the bench extended over a period of eight years, when, to the regret of his associates on the bench and the bar, as well as the community generally, he resigned to resume the active practice of the law in this city. He became the senior member of the firm of Cole & Donaldson, and speedily secured a large and remunerative practice. He was a man of untiring industry, thoroughly devoted to his profession, and counting no sacrifice of time and strength too great in the interests of a client; and it is more than probable that the intensity and constancy of his labors made him a ready victim to the disease which fastened upon him.

Judge Cole enjoyed the cordial respect and esteem of his brethren at the bar, to many of whom his death brings with it a sense of personal loss.

Decedent's Estates—Primary Fund for Payment of Mortgage Debt.

A ruling of much interest was recently made by Mr. Justice Stafford, holding the Probate Court, in the matter of the estate of Caroline Jenkins Harris, deceased. A petition was presented by the husband of the decedent asking to have the personal estate declared free from the payment of a debt secured by deed of trust upon a parcel of real estate. It appeared from the allegations of the petition, which was demurred to, that the trust was placed on the property by one Lewis, the notes secured thereby being endorsed by the decedent before delivery, and that subsequently Lewis sold and conveyed the property, subject to the trust, to the decedent, who died before the maturity of the notes. The personal estate of the decedent being insufficient to pay debts, including that secured by the deed of trust, the real estate was sold by the administrator, and the petition alleged that the administrator in his account was about to reimburse himself for the payment of the trust debt out of the personal estate, thereby depriving the petitioner thereof, inasmuch as the trust debt was greater in amount than the whole of the personal estate after payment of the personal debts. His right to do this was denied, and it was contended for the petitioner that the trust debt should be paid from the proceeds of the trust property, which were sufficient for the purpose; and that the balance of the personal estate in the hands of the administrator belonged of right to the petitioner, as husband of the decedent, under section 1160, Code D. C. As stated above, the petition was demurred to, but Mr. Justice Stafford, in an interesting opinion which we hope to report in full at an early day, adjudged the petition sufficient, holding that, taking the facts to be as stated in the petition, the debt secured by the deed of trust should be paid from the proceeds of sale of the trust property, and not from the personal estate. He therefore overruled the demurrer. Mr. E. Hilton Jackson appeared for the petitioner and Mr. R. H. McNeill for the respondents.

Digitized by Google

Court of Appeals of the District of Columbia.

ANNIE C. GUTHRIE, APPELLANT, v. JANE E. WELCH ET AL.

PROBATE COURT; LETTERS AD COLLIGENDUM; REMOVAL OF COLLECTOR.

1. It is within the sound judicial discretion of the Supreme Court of the District, holding the Probate Court, to remove at will a collector of an estate to whom letters ad colligendum have been issued; and its exercise of that discretion will not be reviewed except where there has been an abuse of it.
2. The removal of a collector appointed pending a will contest on the ground that she is interested in the result of the litigation, is not an abuse of the discretion vested in the Probate Court.

No. 1498. Decided February 7, 1905.

APPEAL from an order of the Supreme Court of the District of Columbia, holding the Probate Court, Adminstration No. 11,532, removing a collector for the estate of a decedent. Affirmed.

Mr. Burton Macafee, *Mr. Andrew Wilson*, and *Mr. N. W. Barksdale* for the appellant.

Mr. C. C. Cole, *Mr. R. Golden Donaldson*, and *Mr. W. B. Reilly* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia, sitting as a probate court, and the question involved in the case is whether that court has authority under the law to remove a collector whom it has appointed for the estate of a deceased person, pending proceedings over a caveat that had been filed against the last will and testament of such deceased person; on the ground that such collector was interested in the litigation and should be a disinterested party.

The facts in brief are these: One Ann E. Coates died in this city on May 15, 1903. After her death, a paper writing purporting to be her last will and testament was offered for probate by Mary Teresa Spalding and Annie C. Guthrie, who were named in it as executrices. They were two out of eleven persons named in the proceedings as being the heirs at law and next of kin of the deceased. Two others of the eleven filed a caveat to the alleged will, on the usual grounds of fraud, undue influence, and the mental incapacity of the deceased to make a valid will. Thereupon, in view of the litigation thus initiated, Annie C. Guthrie was appointed collector of the estate of the deceased, and entered upon the performance of her duties. Petition was filed by the two caveators named for her removal on the ground that the collector should be a wholly disinterested person and neither a legatee nor a distributee of the estate. The prayer of the petition was denied by the court.

Subsequently Annie C. Guthrie filed an account as collector. The two caveators, who are the appellees here, objected to this account and asked for her removal from the office of collector, on the ground, as alleged, that she had concealed and secreted assets of the estate to the amount of $1,234.96. This sum, so claimed to be assets of the estate, appears to have been money deposited in a trust institution or savings bank in this city by Ann E. Coates, which was drawn out by Annie C. Guthrie, in April, 1903, upon a check dated April 1, 1903, and executed and delivered to Annie C. Guthrie by Ann E. Coates, as a voluntary gift from the latter to the former, as claimed by the donee, Annie C. Guthrie. This alleged gift was made on the second day subsequent to that on which the will purports to bear date, which was March 30, 1903; and the appellees claim that the same mental incapacity existed on both dates as to the deceased Ann E. Coates.

Upon the petition of the appellees and the answer thereto of the appellant, who claimed that this money was not part of the assets of the estate, but was her own by voluntary gift from the deceased, the probate court, on the ground, as stated in the order, "that the said Annie C. Guthrie is interested in the pending litigation and some disinterested party ought to be appointed in her place and stead," removed the appellant from the collectorship, and appointed a local trust company to the office. Annie C. Guthrie has prosecuted the present appeal from the order.

It is to be noted that, neither in the order for the removal of the appellant from the office of collector of the estate of the deceased, nor in any other order to be found in the record before us, is there any adjudication by the court below of the question of concealment of assets that was raised by the petition of the appellees; and that the removal of the appellant is based, not upon any such concealment, but upon the impropriety of the collectorship being vested in one interested in the litigation. It is argued on behalf of the appellant that a collector can not be removed for any such cause, or for any cause whatever other than certain specified causes mentioned in the Code.

In reference to the powers of the probate court, the Code provides that "the special term of the Supreme Court, heretofore known as the Orphan's Court, shall be designated the probate court, and the justice holding said court shall have and exercise all the powers and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to the 21st day of June, A. D. 1870" (section 116). And section 119 provides that "it (the probate court) shall have full power and authority to take the proof of wills of either personal or real estate and admit the same to probate and record, and for cause to revoke the probate thereof; to grant and, for any of the causes hereinafter mentioned, to revoke letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and to appoint a successor in the place of any one whose letters have been revoked, etc., etc., etc."

From this section 119, and from the expression used therein that for any of the causes thereinafter mentioned letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship might be revoked by the probate court, it might justly be inferred that it was the intention of the framers of the Code to enumerate specifically thereinafter the several causes for which such revocation might be had. But nowhere in the Code do we find

Digitized by Google

any specific enumeration of such causes. Indeed it would seem that thereafter there is only incidental reference to the matter of revocation of letters, when it is mentioned in sections 122, 123, 124, 125, and 126 as one of the penalties that may be imposed for failure to invest funds as directed by the court; or for concealment of assets of the estate; or for misconduct of a joint executor, administrator, or collector; or for failure to render an inventory or account. The contention of the appellant is that these four specified causes, and these alone, although thus only incidentally mentioned, are the only causes for which letters may be revoked by the probate court. But we can not assent to the justice of this contention.

While the probate court is one of expressly limited jurisdiction, although the special limitation upon its authority contained in the Maryland Act of 1798, chap. 101, subchap. 15, sec. 20, that "the Orphans' Court shall not, under pretext of incidental power or constructive authority, exercise any jurisdiction whatever not expressly given by this act or some other law," has been omitted from our Code, yet it must be assumed that every court has all the authority necessarily implied in the act of its creation. The administration of the estates of deceased persons is a matter committed by our system of jurisprudence almost wholly to courts of probate, by whatever name they may be called; and the conservation of those estates and their ultimate delivery to those entitled to receive them are the main purposes for which such courts have been established. In the contests which only too frequently occur over the validity of wills and the rights of executors therein named, and in the contests which occasionally arise as to the question of administration in the absence of a will or of an executor, the probate court is authorized to appoint collectors, who are in the nature of temporary administrators with more or less limited powers. Such appointment seems to have been originally assumed by probate courts as a matter of necessity. With us it has been long sanctioned by law; and section 304 of the Code, whereby it is expressly authorized, is no more than the reenactment of previously existing statute. See act of Maryland of 1798, chap. 101.

Differently from an executor, who receives his authority from the will of the deceased, and from the administrator, who, although he derives his authority immediately from the court, yet is usually pointed out by the statute and is entitled as a matter of right, unless there is objection to him, a collector derives his appointment and authority wholly from the court. He is merely an officer of the court to conserve the estate until the person properly entitled to administer has been determined. The court is under no limitations whatever as to the person or persons whom it will appoint; and while the wishes of the parties in interest are and should be usually regarded, if they concur in a choice, yet the probate court is absolutely free to select whom it pleases for the office of collector. Being free to select, it should be free to displace a collector whenever, in its opinion, the occasion arises for such displacement, unless there is some special provision of law to the contrary. For, unless restricted by law, the power to appoint necessarily implies the power to remove, even without cause; although in matters of judicial cognizance it is not to be assumed that this power will be exercised arbitrarily or without due regard to the rights and interests of all the persons concerned.

In the matter of the removal of an executor there is of course a limitation upon the authority of the court that it can not be done without just cause, for the reason, as already stated, and as is well settled, that the executor does not derive his authority from the court, but from the will of the deceased; and the power to remove must therefore be specifically granted by the statute. Similarly, in the matter of the removal of an administrator once appointed there is a limitation upon the power of the probate court; for the order of administration is regulated by the statute; and unless there is good cause to the contrary, which, however, is in the sound judicial discretion of the probate court itself, that court is bound to appoint the different persons entitled in the order in which they are designated in the statute, and being compelled to appoint in that order, it is not of course at liberty to nullify the law by arbitrary removal after appointment.

But in reference to collectors the case is wholly different. The collector is merely an officer of the court to conserve the estate, and no more substantially as a receiver is in a court of equity. If he fails to perform his duty satisfactorily there is no reason why he should not be removed. If he has become incapable of performing it, as by illness, insanity, removal from the jurisdiction, or some other such cause, it may become imperative that he should be removed. He has no such right or interest in the estate as has the executor or administrator, that would preclude action for his removal by the court which appointed him.

It is very true that by the sections of the Code which have been cited, collectors have so far been assimilated to executors and administrators as that provision is made for their removal in certain specified classes of cases. But it does not follow from this that they may not be removed for other causes also. These provisions of law do not purport to be exclusive, and very plainly they do not include all the cases in which it would be necessary or proper to revoke letters ad colligendum. They do not include cases of disability on the part of the collector to perform his duty, when such disability has supervened after the appointment. They do not include cases of disqualification, which would have precluded the appointment in the first instance if the disqualification had then been known, but of which the knowledge has come to the court or to the parties in interest after the appointment. They do not include many cases of possible misconduct, which would render the continuance of the collector in office dangerous to the security of the estate. To hold that in all such cases the court has so tied its own hands as not to be able to untie them, would be to render the administration of the probate law dangerous in the extreme to all the interests involved in litigation over the estates of deceased persons.

We find no adjudicated case that states a doctrine contrary to this. Those that are cited on behalf of the appellant are cases regarding the

Digitized by Google

removal of administrators; and administrators, as we have stated, stand upon a very different basis from collectors.

Holding, as we do, that the probate court has the discretion, the sound judicial discretion, to remove at will a collector of an estate to whom letters ad colligendum have been issued, we do not deem it either necessary or proper to determine whether in the present instance that discretion has been properly exercised. It has been repeatedly held that, when there is a judicial discretion vested in a court, the exercise of that discretion will not be reviewed in an appellate tribunal, except for the abuse of it; and certainly there would seem to be no abuse of discretion in the attempt to find an impartial collector who has no interest with either party to a pending litigation.

It follows that the order appealed from must be affirmed, with costs.

The cause will be remanded to the Supreme Court of the District of Columbia for further proceedings therein according to law. And it is so ordered.

Affirmed.

THE UNITED STATES, EX RELATIONE OF JUAN RODRIGUEZ, APPELLANT, v. JOHN M. BOWYER, COMMANDER U. S. N., ET AL.

CIVIL SERVICE RULES; APPLICATION BY PORTO RICAN FOR REGISTRATION; MANDAMUS.

Under Rule V of the civil service rules, promulgated by the President on April 15, 1903, a native of Porto Rico, owing allegiance to the United States, and possessing the necessary qualifications required by the remaining regulations, is entitled to registration by the board of labor employment at the United States Navy Yard in this city; and mandamus will lie to compel said board to grant his application for such registration.

No. 1504. Decided March 7, 1905.

APPEAL by relator from an order of the Supreme Court of the District of Columbia, at Law, No. 46,916, dismissing a petition for mandamus. Reversed.

Mr. Fredrigo Degetau and *Mr. Jean F. P. des Garennes* for the appellant.

Mr. Morgan H. Beach, *Mr. Jesse C. Adkins*, *Mr. Wm. J. Hughes*, and *Mr. Wm. R. Harr* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order dismissing a petition for a writ of mandamus filed on behalf of the relator, Juan Rodriguez, against John M. Bowyer and others, constituting the Board of Labor Employment at the United States Navy Yard in the city of Washington.

It appears from the petition and return and an agreed statement of facts that petitioner was born in Porto Rico on December 6, 1884; that he remained therein until after the ratification of the treaty of Paris and the passage of the "Foraker Act," and became and is a "citizen of Porto Rico." He came to the District of Columbia, and on February 16, 1904, made application to the Board of Labor Employment for admission to examination and registration under the regulation providing that no person shall be given employment as a mechanic or laborer until he registers. Among other qualifications required by the regulation is one that the applicant shall be a citizen of the United States. It is unnecessary to state the other qualifications relating to capacity and so forth, for it is admitted that the board found that they were possessed by the petitioner, and denied registration on the sole ground that the petitioner, though a citizen of Porto Rico and owing allegiance as such to the United States, was not, under the Constitution and laws of the United States, a citizen of the latter.

The Board of Labor Employment are ministerial officers and their duty in the premises did not cease to be ministerial because they rested their refusal of registration on the determination of a pure question of law, involving the ascertainment of no fact whatever. Roberts v. U. S. ex. rel. Valentine, 13 App. D. C. 38, 46: 26 Wash. Law Rep. 375; s. c., 176 U. S. 221, 231.

We do not find it necessary to enter upon the inquiry whether the petitioner, at the time of making his application for registration, was a citizen of the United States and entitled to all of the civil rights and immunities pertaining to such citizenship, because we are of the opinion that the regulation of the Navy Department, made in 1896, has been modified by regulations and rules of the civil service of the United States since made by order of the President. The original navy yard rules and regulations were adaptations of the principles of the civil service, though not then subject to the jurisdiction of the Civil Service Commission. 20th Rep. C. S. Com., pp. 100, 101. They were, however, brought under the supervision of the commission by order of President Cleveland on November 2, 1896. 13th Rep. C. S. Com., p. 151.

No modification of the rule requiring an applicant for registration to be a citizen of the United States was suggested by any conditions existing prior to the treaty of Paris. New conditions arising thereafter were met by additional civil service rules promulgated by President Roosevelt on April 15, 1903. Of these, Rule V provides that "No person shall be admitted to examination unless he be a citizen of or owe allegiance to the United States." And thereunder it is provided that "An applicant who claims United States citizenship by virtue of residence in Porto Rico, and who shows birth or naturalization in Porto Rico, will not be required to show further evidence of citizenship." 20th Rep. C. S. Com., p. 48.

Since that time, as shown in the same report (p. 16), seventy-eight residents of Porto Rico have received appointments in the general service of the United States, eleven of these being in the service in the city of Washington.

The board of labor employment having admitted that the petitioner was a native of Porto Rico, owing allegiance to the United States, and that he possessed all of the qualifications required by the remaining regulations, it is their plain duty to admit him to registration in accordance with his application.

That the petitioner may, possibly, not receive any substantial benefit from his registra-

Digitized by Google

tion is not a sufficient reason for denying him the remedy sought. The conditions of the case distinguish it from those of Brown v. Root, 18 App. D. C. 239: 29 Wash. Law Rep. 477; Edwards v. Root, 22 App. D. C. 419: 31 Wash. Law Rep. 679, upon which the respondents rely.

The order dismissing the petition will be reversed, with costs, and the cause remanded with directions to issue the writ as prayed. It is so ordered.

Reversed.

ROBERT JACKSON, APPELLANT,
v.
GEORGE E. EMMONS ET AL.

TRESPASS; STATUTE OF LIMITATIONS.

In an action of trespass, where it appeared there had been three separate and distinct trespasses, two of which were barred by the statute of limitations, held that the recovery was properly confined to the damage sustained by reason of the third trespass; and evidence as to personal injuries sustained by plaintiff's wife from one of the other trespasses properly excluded.

No. 1455. Decided March 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 38,509, entered upon the verdict of a jury in an action of trespass. Affirmed.

Mr. J. J. Waters for the appellant.

Mr. Wm. F. Mattingly for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This cause is a suit at common law for damages resulting from a trespass to property, and it is now here for the third time. On the last appeal to this court, which is found reported in 19 D. C. App. 259: 30 Wash. Law Rep. 72, the facts of the case were stated and need not be here repeated, further than to say that the appellees were engaged in some blasting operations in the neighborhood of Rock Creek, in this city, and in proximity to a little house occupied by the appellant and his family; that these operations, which appear to have been at first conducted without any permission from the municipal authorities, which, however, was afterwards obtained, were carried on somewhat recklessly, and constituted a serious menace to the appellant and his family; that on three several occasions his house was injured by the stones; and thaton one of these occasions his wife was struck by a piece of rock and somewhat injured.

The appellant instituted suit in the Supreme Court of the District; and besides the defense of the general issue, that of the statute of limitations was interposed. There was also a defense to the effect that the plaintiff did not own the house, and was only a tenant at sufferance or at will. It was held that he could not recover. On appeal to this court we held that his ownership of the property was such as to entitle him to recover; but that, as two of the three special acts of trespass set out in the declaration were barred by the statute of limitations, he could only recover, if at all, upon the third act of trespass; and we remanded the cause for a new trial upon the issues so defined. That new trial has now been had, and the plaintiff has had verdict and judgment rendered in his favor for the whole amount of the damage claimed by him in the declaration to have been done by the third act of trespass. This verdict and judgment the appellees do not seem to have resisted. But the plaintiff nevertheless appeals again to this court, on the ground that the action of the appellees was a continuing trespass, and especially on the ground that he should have been allowed to recover for the injury to his wife, which on the previous trial had been shown to have been the result of one of the trespasses barred by the statute of limitations. The verdict and judgment rendered restricted him to the damage done by the third trespass, which he himself, both in his declaration and his proof, specifically stated to have been only $64.21.

The ruling of the trial court was entirely right, and was in full accordance with the opinion of this court on the former appeal. So far as the appellant was concerned, it is very plain that there was no continuing nuisance, but three several, separate, and distinct assaults upon his property, for two of which he was barred from recovery by the statute of limitations, and for the third of which he recovered all he claimed in his declaration. This should be the end of his case.

His main effort during the last trial was to introduce testimony as to the injury of his wife, which he concedes to have been the result of the trespass of July 21, which was barred by the statute of limitations. The trial court very properly refused to allow the introduction of any such testimony, and we do not deem it necessary to discuss the matter further.

The judgment will be affirmed with costs, and it is so ordered.

Affirmed.

BENJAMIN W. GUY, APPELLANT,
v.
THE DISTRICT OF COLUMBIA.

TAXATION; CERTIORARI TO REVIEW ASSESSMENT.

1. The writ of certiorari is a proper remedy in proper cases for relief against illegal assessments; but to entitle a party applying to the favorable exercise of the court's discretion it must be shown as a ground for the writ that wrong and injustice will be suffered if it be not granted; and the application must be made without unreasonable delay; following Padgett v. District of Columbia, 28 Wash. Law Rep. 868.
2. The quashing of the writ held proper where not only was there no showing that wrong and injustice would be suffered if the writ were not granted, and also a delay of sixteen years in applying therefor, but the petition on its face showed that there was danger of wrong and injustice being done if the writ were granted.

No. 1505. Decided March 7, 1905.

APPEAL by petitioner from an order of the Supreme Court of the District of Columbia, at Law, No. 47,085, quashing a writ of certiorari to review a tax assessment. Affirmed.

Mr. O. B. Hallam for the appellant.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

Digitized by Google

This is a proceeding in certiorari in the Supreme Court of the District of Columbia to bring up the record of certain assessments and a tax sale thereunder, and for a cancellation of the tax sale.

The appellant, on July 19, 1904, filed his petition in the Supreme Court of the District, in which he alleged, in substance, that he was the owner in fee simple of lot No. 23, in square No. 869, in this city; that there was borne on the tax records of the District the entry or record of a sale made of the said lot on February 23, 1888, for the sum of $1,734.95 to one John G. Slater, which said sum of $1,734.95 was made up of four several special items, as follows: (1) A certificate, No. 1637, for a special assessment in the name of one Emanuel Mason, amounting with interest to $926.56; (2) a lien certificate, No. 12,116, for special assessment in the same name, amounting with interest to $365.61; (3) general taxes for the years from 1878 to 1884, both inclusive, assessed in the name of William Deacon, amounting to $389.59, and (4) general taxes for the years 1885 and 1886, assessed in the name of L. M. Saunders, amounting to $53.25; that no deed had ever been executed in pursuance of such tax sale, but that a certificate of said sale had been issued to said Slater, which was outstanding and uncancelled, and constituted a cloud upon the petitioner's title. And the petition proceeded further to allege that the assessments had been made in violation of law, and without notice to the owner of the lot, and were null and void. The prayer of the petition was for the writ of certiorari to bring up the record of the proceedings of the municipal authorities in the premises, and for the annulment of the tax sale above mentioned.

There was an order for the writ to issue, and then there was a motion made on behalf of the District to quash it, which motion was supported or supplemented by an affidavit of one of the Commissioners for the District. In this affidavit a history of the transaction was given from the records of the District, whereby it appeared, among other things, that after the issue of the certificate of sale, as mentioned in the petition, to John G. Slater, he and one Christiana became the owners of the property, and that, on June 28, 1904, the petitioner, Guy, had become the owner of the property under divers mesne conveyances from Slater and Christiani.

The motion to quash the writ was allowed, and the writ was accordingly quashed, and the petition was dismissed. From the order to that effect the petitioner has now appealed to this court.

The proceedings in this case seem to have been based upon those had in the case of Padgett v. The District of Columbia, 17 D. C. App. 255, 28 Wash. Law Rep. 868, where a course similar to that here pursued was sanctioned. While we have no disposition to modify in any manner the force of the decision therein rendered, or the course of reasoning by which that decision was reached, we desire it to be distinctly understood that the mode of procedure in that case was exceptional in its nature, and not intended to be applicable to all cases where it is sought by writ of certiorari to correct an illegal assessment. In that case it was said by the chief justice, speaking for this court:

"Of course we do not intend to be understood as holding that the writ (of certiorari) is not a proper remedy in proper cases for relief against illegal assessments; but to entitle the party applying to the favorable exercise of the court's discretion, it must be shown as a ground for the writ that wrong and injustice will be suffered if the writ be not granted. And the application, moreover, must be made without any unreasonable delay."

The present case, however, does fall under the principle and the ruling of the Padgett case. It is not made to appear here that wrong and injustice will be suffered if the writ is not granted. Nor does it appear that the application has been made without unreasonable delay. On the contrary, it does appear affirmatively from the petition itself that there is a delay of upwards of sixteen years; that is, from February 23, 1888, the date of the alleged illegal tax sale, to the date of the filing of the petition, July 10, 1904,—a period longer than that of any act of limitations now in force in this District. And, instead of showing that wrong and injustice will be done unless the writ is granted, the petition on its face shows that there is grave danger that wrong and injustice will be done if the writ is granted. For the petition shows that a certificate of sale has been issued to one John G. Slater, upon which prima facie he is entitled to have a conveyance made to him, and yet the proposition of the petition is, as is the purpose of the whole proceeding, that this certificate of sale should be declared void and should be cancelled without giving Slater, the person most vitally interested in it, an opportunity to be heard in defense of his rights. Instead of being in the interest of justice, this would be most flagrant injustice.

It is to be presumed, of course, that the District of Columbia has received its money in the premises upon or before the issue of the certificate of sale; and, if it has received its money, which certainly can not be recovered back under a proceeding of this kind, if at all, it is not apparent that it has any interest whatever in the proceedings, further than as they would set a precedent for interference with their fiscal operations. The only person interested in opposition to the petitioner, in accordance with the petitioner's own showing, is Slater, and Slater is not, and can not be made, a party to the proceeding. This, of itself, is sufficient to show that the writ of certiorari should not be issued in a case of this kind.

It is very true that, if we take into consideration the affidavit filed by the respondent or on behalf of it, a very different case is presented. There we find that Slater was not only the owner of the certificate of sale, but that he subsequently purchased the property in order to complete the title in himself, and that the present petitioner merely succeeded to his rights. It would be a glaring absurdity if Slater had filed this petition; and the situation is not relieved of its absurdity to any extent by the fact that not he, but his vendee, has filed it. The petitioner, by becoming a recent purchaser of the property in 1904, did not relieve himself from the effect of the period of long delay that had been suffered to elapse since the issue of the

Digitized by Google

certificate, nor from the effect of the merger of the certificate into the fee simple title when both became possessed by the same person.

It is not apparent that any good purpose can be subserved by the writ of certiorari in this case; but it is apparent that much mischief may be done by it. If the petitioner has any rights in the premises as against the District of Columbia he is not without remedy; but he has not shown himself to be entitled to the writ of certiorari.

The order appealed from will be, and it is hereby, affirmed with costs. And it is so ordered.

Affirmed.

United States Supreme Court.

WILLIAM H. McCAFFREY, EDWARD QUIGLEY, ET AL., APPELLANTS,

v.

LIZZIE C. MANOGUE, GEORGE W. MANOGUE, AND FRANK FOLEY.

WILLS, CONSTRUCTION OF; DEVISE IN GENERAL TERMS; INTENTION OF TESTATOR.

1. In construing a will, the policy of the law in favor of the heir yields to the intention of the testator if clearly expressed or manifested.
2. The provisions of a will construed and held to give the devisees an estate in fee simple, and not merely a life estate.
3. In the construction of wills the courts are not required to adhere rigidly to precedents.

Decided February 20, 1905.

APPEAL from the Court of Appeals of the District of Columbia. Reversed.

The question involved in this case is the construction of the will of Hugh McCaffrey, deceased. It was duly admitted to probate and recorded in the Supreme Court of the District. It is as follows:

"WASHINGTON, DISTRICT OF COLUMBIA,
April Thirtieth, 1896.

"In the name of God, being now in good health and sound in mind and body I hereby certify and declare this to be my last will and testament, hereby annulling and revoking any and all wills previously made.

"I give and bequeath to my daughter Mary A. Quigley house number 301 at southwest corner of 11th and C streets southeast, being in lot number 5, in square 970, with the store and dwelling, stock and fixtures, and lot on which it stands, also houses numbers 13 and 15 6th street southeast with lots on which they stand, being parts of lots 19 and 20 in square 841, also any money in bank to my account at the time of my death, also any money due to me, also any building association stock. She is to pay funeral expencies and any other legal debts I may owe, also to care for my lot in Mount Olivet cemetrey.

"I give and bequeath to my son, James B. McCaffrey, house number six hundred and two (602) East Capitol street and lot on which it stands, being in lot number ten (10) in square number eight hundred and sixty-eight (868).

"To my son, William H. McCaffrey, I give and bequeath house 604 East Capitol street, being in lot number ten (10), in square number eight hundred and sixty-eight (868) and lot on which it stands.

"To my daughter, Lizzie Manogue, I give and bequeath house number fourteen hundred and twenty-three (1423) Corcoran street, N. W., and lot on which it stands, being lot number fifty-four (54) in square number two hundred and eight (208).

"2. To my son, Francis T. McCaffrey, I give and bequeath house five hundred and nineteen (519) East Capitol street, and lot on which it stands, being part of lot number (20) in square eight hundred and forty-one (841), also my horse and buggy.

"And to my grandson, Frank Foley, I give and bequeath house number one hundred and twenty-one (121) Eleventh street, S. E., being in lot number fourteen (14), square number nine hundred and sixty-eight (968), and lot on which it stands.

"To my grandson Joseph Quigley, I give and bequeath my watch and chain.

"I hereby name and appoint as executors of this my last will and testament, John E. Herrell and Patrick Maloney.

"All the real estate herein described is located in the city of Washington, District of Columbia.

"HUGH McCAFFREY. [SEAL.]"

The devisees in the will were the only heirs of the testator.

On the 10th of July, 1897, Mary A. Quigley died, leaving surviving four children, the appellants Catherine L., Margaret, Mary, and Joseph Quigley. Edward Quigley, her husband, also an appellant, survived her. She left a will, which was duly admitted to record, by which she devised all her estate to Catherine L. and Edward Quigley in trust for her children. Francis T. McCaffrey, son of Hugh, and one of the devisees in the latter's will, died October 20, 1898, leaving as heirs at law his brothers and sisters, the children of his deceased sister, Mary A. Quigley, and his nephew, Frank Foley. He left a will, by which he devised and bequeathed all of the property to his sister, Lizzie C. Manogue, and his brothers William A. and James B. McCaffrey, "absolutely and in fee simple, according to the nature of the property, as tenants in common, but not as joint tenants." At the time of his death he was seized and possessed of the real estate devised to him by his father.

James B. McCaffrey has sold and conveyed the lot devised to him to the respondent George W. Manogue. Upon an attempt to sell the property devised by Francis T. McCaffrey a doubt was raised as to the extent of the interest devised to him and the other devisees by the will of H. McCaffrey, whether an estate for life or in fee simple. This suit was brought "to have it determined what estate each of the said devisees took thereby, and to have their title quieted as against any person or persons who may claim adversely to the same as heirs of said Hugh McCaffrey, or under such heirs."

It was decreed by the trial court that only life estates were devised by the will, and the decree was affirmed by the Court of Appeals. 22 App. Cases D. C. 385: 31 Wash. Law Rep. 454.

Mr. Justice McKENNA, after stating the case, delivered the opinion of the court:

Digitized by Google

It will be observed that the devises are expressed in exactly the same way. To Mary A. Quigley, however, there are given several pieces of real estate, the money of the testator in bank and his building association stock. She is charged with the payment of the testator's funeral expenses and debts; also with the care of his cemetery lot. Nevertheless, neither of the lower courts distinguished between the devisees—to all was applied the rule of law that a devise of land without words of limitation or description gives a life estate only. The Court of Appeals held that the charge or burden upon Mary A. Quigley to pay the funeral expenses and debts of the testator was offset by the gift to her of personal property. It is insisted that the ruling is contrary to the decision in King v. Ackerman, 2 Black, 408. It is there said: "The rule of law which gives a fee where the devisee is charged with a sum of money is a technical dominant rule, and intended to defeat the effect" of the artificial rule established in favor of the heir at law, that an indefinite devise of land passes nothing but a life estate. It was, however, apparent to the Court of Appeals that, to follow King v. Ackerman, would not execute the intention of the testator by opposing one technical rule by another, but would discriminate between his heirs and destroy the equality between them which it was the purpose of the will to create. To effect this equality the court selected, not the "dominant rule," whose virtue this court pointed out, but the other, regarding it the most commanding. It is altogether a strange tangle of technicalities. Apply either of them, or both of them, and we defeat the intention of the testator. Are we reduced to this dilemma? We think not; nor need we dispute the full strength of the rule in favor of the heir at law. It is not an unyielding declaration of law. It can not be applied when the intention of the testator is made plain. It can not be applied when the purpose of the testator, as seen in the will, can not be carried out by a devise of a less estate than the fee. Bell County v. Alexander, 22 Texas, 350. The policy of the law in favor of their yields, we repeat, to the intention of a testator is clearly expressed or manifested. That policy, the reason for it and the elements of it, is expressed strongly by Mr. Justice Story in Wright v. Denn, 10 Wheat. 204, 227, 228:

"Where there are no words of limitation to a devise, the general rule of law is, that the devisee takes an estate for life only, unless, from the language there used or from other parts of the will, there is a plain intention, because if it be doubtful or conjectural upon the terms of the will, or if full legal effect can be given to the language without such an estate, the general rule prevails. It is not sufficient that the court may entertain a private belief that the testator intended a fee; it must see that he has expressed that intention with reasonable certainty on the face of his will. For the law will not suffer the heir to be disinherited upon conjecture. He is favored by its policy; and though the testator may disinherit him, yet the law will execute that intention only when it is put *in a clear and unambiguous shape.*" (Italics ours.)

We think the intention of McCaffrey is "put in a clear and unambiguous shape." He intended to dispose of his whole estate. It is true there is no introductory clause expressing such intention, but there is no residuary clause indicating that he intended to pass less than all of his estate. And all of his heirs at law were his devisees. In other words, the very heirs for whom the rule is invoked are those among whom he distributed his property, and surely he intended a complete distribution—to vest in each the largest interest he could give, not assigning life estates with residuary fees to the very persons to whom such life estates were devised. In other words, making each heir the successor of the other and of himself. It was evident to the Court of Appeals—it is evident to us—that he intended to make his heirs equal. Of this purpose the charge upon his daughter, Mary A. Quigley, is dominantly significant, not only in effect, but in its expression. She is given a greater quantity of real estate than the other devisees. She is given personal property besides, but, declared the testator, "she is to pay funeral expenses and other legal debts I may owe, also to care for my lot in Mount Olivet Cemetery." That charge was not intended to enlarge the quantity of interest in the real estate devised in the sense contended for, but to make an equality between her and the other heirs and devisees, and, we repeat, that was his especial purpose. In other words, he gave her more property, not a larger interest in it. The devise to his grandson, Frank Foley, shows how carefully the testator regarded his heirs. Surely, as he regarded that grandchild as inheriting the rights which his mother might have inherited, he did not intend a disposition of his property which precluded his other grandchildren of inheriting through their parents. And this will be the result if the appellees are right. No devisee possesses an estate which can be devised to or inherited by his or her children.

Against the effect of the heirs at law of the testator being also his devisees, it may be said that it has been held that, though a testator has given a nominal legacy to his heir or declared an intention to wholly disinherit him, the inflexibility of the rule in favor of the heir has been enforced. Frogmorton v. Right, 2 W. B. 1045; Right v. Sidebotham, Douglas, 759; Roe d. Peter v. Daw, 3 M. & Sel. 518.

In Right v. Sidebotham, Lord Mansfield felt himself constrained to enforce the rule, but he observed in protest: "I verily believe that, in almost every case whereby in law a general devise of land is reduced to an estate for life, the intent of the testator is thwarted; for ordinary people do not distinguish between real and personal property. The rule of law, however, is established and certain, that expressed in words of limitations, the words tantamount are necessary to pass an estate of inheritance." And he hence concluded that words tending to disinherit the heir at law, unless the estate is given to someone else, was not sufficient to prevent the heir from taking.

Lord Ellenborough in Roe d. Peter v. Daw followed the rule, and declared also that he thereby probably defeated the intention of the testator. It is a strange conclusion from the facts and needs the sanction of those great names to rescue it from even stronger charac-

Digitized by Google

terization. Lord Mansfield spoke in 1781, Lord Ellenborough in 1815. We can not believe, if called upon to interpret a will made in 1896, when the rights of heirs are not so insistent and the rule in their favor lingers, where it lingers at all, almost an anachronism; when ownership of real property is usually in fee, and when men's thoughts and speech and dealings are with the fee, they would hold that the purpose of a testator to disinherit his heirs could be translated into a remainder in fee after a devise of a life estate to another.

But, perhaps, even the severe technicality of those cases need not be questioned. In the construction of wills we are not required to adhere rigidly to precedents. We said in Abbott et ux. v. Essex Co., 18 How. 202, 213:

"If wills were always drawn by counsel learned in the law, it would be highly proper that courts should rigidly adhere to precedents, because every such instrument might justly be presumed to have been drawn with reference to them. But in a country where, from necessity or choice, every man acts as his own scrivener, his will is subject to be perverted by the application of rules of construction of which he was wholly ignorant."

To like effect is Cook et al v. Holmes et ux., 11 Mass. 527, where the will passed on contained the following devise: "Item. To his grandson Gregory C., only child of his son Daniel C., deceased, a certain piece of land in Watertown, containing about 6 acres." The will contained devises to other sons of pieces of real estate, charging them with payment of certain legacies. The will concluded as follows: "The above-described legacies, together with what I have heretofore done for my children and grandchildren, make them nearly equal, and are their full portions of my estate."

The will, therefore, is similar to the will in the case at bar. Equality between the devisees is as much the purpose of one as the other, though it is expressed in one and deduced as an implication in the other. Chief Justice Parker, in delivering the opinion of the court, said: "The quality of the estate which Gregory C. took by the devise must be determined by the words of the will, taken together, and receiving a liberal construction, to effectuate the intention of the testator as manifested in the will."

Further: "The words of the particular devises to Gregory, considered by themselves, certainly give no inheritance." And stating the rule of law to be, as contrasted with the popular understanding, "that such a devise, standing alone, without any aid in the construction from other parts of the will would amount only to an estate for life in the devisee," added:

"But it is too well established and known to require argument or authorities now to support the position that devises and legacies in a will may receive a character, by construction and comparison with other legacies and devises in the same will, different from the literal and direct effect of the words made use of in such devise (cases were cited in note); and this because the sole duty of the court in giving a construction is to ascertain the real intent and meaning of the testator, which can be better gathered by adverting to the whole scope of the provisions made by him for the objects of his bounty than by confining their attention to one isolated paragraph, probably drawn up without a knowledge of technical words or without recollecting the advantage of using them."

The devise to Gregory C. was held to be of the fee.

From these views it follows that the decree of the Court of Appeals must be and it is reversed, and the case is remanded to that court with directions to reverse the decree of the Supreme Court, and remand the case to that court with directions to enter a decree in accordance with this opinion.

Mr. Justice Peckham dissents.

The moral obligation of a son to support his mother is held, in Freeman v. Dodge (Me.), 66 L. R. A. 395, not to be a sufficient consideration to support a promise to reimburse the town for expenses incurred for that purpose.

An agreement made by husband and wife in contemplation of separation, through the intervention of a trustee, as to the wife's support, is held, in Bailey v. Dillon (Mass.), 66 L. R. A. 427, to be a valid one, which, during the continuance of the separation, the husband may have specifically enforced if it is fair and reasonable and free from fraud and concealment.

The right of a person to shoot an officer who merely announces an intention to arrest him is denied in Keady v. People (Colo.), 66 L. R. A. 353, although the character of the officer does not appear, and the arrest would be unwarranted. An elaborate note to this case reviews all the other authorities on homicide in resisting arrest, or of officers of justice.

The right of an employee to recover damages of a railroad company for an injury proximately caused by his violation of a penal statute or municipal ordinance is denied in Little v. Southern R. Co. (Ga.), 66 L. R. A. 509, even though the employer may have directed the employee to violate the law, or may have sanctioned the continuance of a custom amounting to a contravention of the law.

The inadvertent omission of a copyright notice from the publication of a copyrighted article by a licensee of the owner of the copyright is held, in American Press Ass. v. Daily Story Pub. Co., C. C. A. 7th C., 66 L. R. A. 444, not to withdraw the protection of the copyright, or absolve another, who publishes the matter without authority, from liability in damages, although he was ignorant of the existence of the copyright. The question of the effect of omitting notice of copyright from licensed publication is considered in a note to this case.

A bank which receives in the ordinary course of business a check drawn upon it, presented by a bona fide holder, who is without notice of the fact that payment thereof has been stopped, and which pays the amount thereof to such holder, is held, in National Bank of New Jersey v. Berrall, N. J. Err. & App., 66 L. R. A. 599, not to be able afterwards to recover back the money as paid by mistake, on the ground that payment of the check had been countermanded by the drawer.

Digitized by Google

THE Court of Appeals, in an opinion by Mr. Justice Duell, has affirmed the decree of the court below in the case of Nagonab v. Hitchcock, Secretary of the Interior. The object of the suit was to enjoin the Secretary of the Interior from carrying out certain provisions of the act of Congress of June 27, 1902, on the ground that the act was in violation of the trust contained in the act of January 14, 1889, under which certain lands were conveyed to the United States by the Chippewa Indians. The lower court held that the facts stated in the bill were not sufficient to entitle the complainant to relief, and dismissed the bill; and this ruling is affirmed by the Court of Appeals.

Continued use of a right of way which originated in necessity after the necessity has ceased is held, in Ann Arbor Fruit & V. Co. v. Ann Arbor R. Co. (Mich.), 66 L. R. A. 431, not to become adverse until notice of the adverse claim is brought home to the owner of the servient estate.

An act done by a servant while engaged in the work of his master, but entirely disconnected therefrom, and solely for the accomplishment of the malicious or mischievous purpose of the servant, is held, in Evers v. Krouse, N. J. Err. & App., 66 L. R. A. 592, not to render the master liable for injuries to a third person resulting from such act.

The liability of a non-resident debtor to a non-resident corporation is held, in National Broadway Bank v. Sampson (N. Y.), 66 L. R. A. 606, not to be subject to attachment within the State when the debtor is temporarily within its jurisdiction, since the situs of the debt is at the place of residence either of the debtor or of the creditor.

The liability of a landlord for injury to a tenant because of defects in the construction of the building on the leased premises, of which he had no knowledge, and which were so hidden that there was no way of discovering them without undoing a portion of the construction work, is denied in Whitley v. McLaughlin (Mo.), 66 L. R. A. 484.

Extra services rendered to a person after she became insane are held, in Waldron v. Davis, N. J. Err. & App., 66 L. R. A. 591, not to be presumed to have been intended as a gratuity, where, before becoming insane, she lived with the person performing the services under a contract that the latter was to board and care for her for a fixed price, and, until insanity supervened, payments for such board and care were regularly made.

The injury inflicted upon a street-car passenger through mental suffering, humiliation, wounded pride, and disgrace because of the act of the conductor in calling her a deadbeat when she asked for the proper change for money she had tendered in payment of fare, is held in Gillespie v. Brooklyn Heights R. Co. (N. Y.), 66 L. R. A. 618, to be properly considered in assessing damages for breach of the carrier's contract to return the proper change for money tendered.

The intentional kicking, without just cause or excuse, by a street car conductor, of a boy who was attempting to board the car to become a passenger, is held, in McNamara v. St. Louis Transit Co. (Mo.), 66 L. R. A. 486, to justify an award of exemplary damages against the street car company, although the conductor honestly believed that the boy was attempting to steal a ride.

A distribution of prizes to those who shall make the closest estimate of the number of cigars on which a tax is paid during a specified month is held, in People ex rel. Ellison v. Lavin (N. Y.), 66 L. R. A. 601, to be made by chance, within the meaning of a statute defining a lottery as a scheme for the distribution of property by chance to persons who have paid or agreed to pay a valuable consideration for the chance.

Sureties on an executor's bond are held, in United Brethren First Church v. Akin (Or.), 66 L. R. A. 654, to be liable to creditors of the estate for their distributive shares of an indebtedness owing from him to the estate at the time of his qualification as executor, for which the statutes make him liable on his final settlement as for so much money in his hands, although he was at the time of his qualification insolvent, and the sureties executed the bond without knowledge of his indebtedness or insolvency.

An answer denying merely that the payee of a note suing thereon is the owner and holder thereof, and alleging that he is not the real party in interest, is held, in Berry v. Barton (Okla.), 66 L. R. A. 513, to state no defense to a petition which recites the execution of the note to the payee for a valuable consideration, and that the maker has defaulted, and the payee is held to be entitled to judgment on the pleadings. All the other authorities on sufficiency of answers denying ownership of plaintiff in actions on negotiable instruments are collated in an extensive note to this case.

A landlord is held, in Davis v. Smith (R. I.), 66 L. R. A. 478, not to be liable for the damages resulting to the tenant or a member of his family through sickness caused by breach of his covenant to repair, either in tort or upon the contract.

The right to an injunction to restrain one of the former members of a partnership, each of whom, on a sale of the business and its good will, bound himself in the act of sale not to engage in a competitive business within a certain city for a certain period of time, from continuing in a rival business into which he had entered in violation of his contract, is sustained in Eugene Dietzgen Co. v. Kokosky (La.), 66 L. R. A. 508, and he is denied the right to set up in justification of his act that the purchasers had orally agreed, as a consideration for his promise not to engage in a rival business, to employ him for a period longer than that during which he had bound himself not to enter into a competitive business, and had wrongfully discharged him before the termination of such period.

Digitized by Google

Washington College of Law,

1403 New York Ave. N. W.

Ninth year opens Monday, October 3, at 7 p. m., with an introductory lecture, to which the public is cordially invited.

Three years' course leading to degree of LL. B. Postgraduate courses of one year leading to degree of LL. M.

Full corps of eighteen lecturers and professors. Admits as students women and men properly qualified. Lectures between 6.30 and 9 p. m. Tuition, $50 a year.

For year books or further information apply to the Dean.

E. S. MUSSEY, LL. M.,

'Phone East 334-M. 1649 416 Fifth St. N. W.

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1654 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Jesse E. Potbury and Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William T. Mathews, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SIMON WOLF, cor. 14th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,721. Administration. 11-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Lewis C. Main, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1905. MOLLIE M. MAIN, 417 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,235. Adm. 11-3t

Legal Notices.

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Reuben Taylor, Deceased.
No. 12,751. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Julia Taylor, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to Sarah Quinlan and William Taylor, and to all others concerned, to appear in said court on Friday, the 31st day of April, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

A. S. Worthington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of James N. Tyner, Deceased.
No. 12,762. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Christine Tyner, it is ordered, this 14th day of March, A. D. 1905, that notice be and hereby is given to Lillie E. Tyner, and to all others concerned, to appear in said court on Tuesday, the 18th day of April, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Edward L. Hillyer, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Anna Johnson, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of April, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by Edward L. Hillyer, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,012. Administration. 11-3t

Oscar Luckett, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Owen Donnelly, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of April, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. GEORGE R. REPETTI, by Oscar Luckett, Attorney. Test: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,019. Administration. 11-3t

Digitized by Google

Legal Notices.

Bates Warren and W. L. Browning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Harriet S. Lusk**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SAMUEL ROSS, 11th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,487. Administration. 11-3t

Raleigh Sherman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Isaac Hollingsworth**, late of the State of Virginia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of September, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. RALEIGH SHERMAN, 514 11th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,839. Administration. 11-3t

Jos. D. Sullivan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William H. Veerhoff**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of March, 1905. O. L. VEERHOFF, 1217 F st.; GEO. K. BAIER, 917 Eye st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,678. Administration. 11-3t

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes Suman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. A. F. FOX, 14th st. and N. Y. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,766. Administration. 11-3t

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Walter L. Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. ALLAN R. CAMPBELL, 42 Broadway, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,731. Administration. 11-3t

Legal Notices.

Carlisle & Johnson, Solicitors

In the Supreme Court of the District of Columbia.
Alexander Campbell v. Eliza McConnell et al.
No. 24,863. In Equity.

Upon consideration of the report of J. M. Carlisle, trustee herein, filed March 13th, A. D. 1905, it is, by the court, this 13th day of March, A. D. 1905, ordered that the sales of lot lettered "N" in William B. Todd's subdivision of a part of original lot numbered 1 and the whole of lots numbered 2 and 3, in square 638, as described in said report, improved by premises known as No. 436 1st st. southwest, to Patrick Smyth for the sum of nine hundred and fifty dollars ($950.00), and part of original lot numbered 23 in square numbered 1018, described more fully by metes and bounds in said report, improved by premises known as No. 411 13th st. southeast, to Alexander Campbell for the sum of eight hundred and fifty dollars ($850.00), as made and reported by said trustee, be finally ratified and confirmed unless cause to the contrary be shown on or before the **13th day of April, A. D. 1905**. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of adminstration on the estate of **R. Catharine Cain**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of February, 1905. BERNARD J. CAIN, 1601 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,734. Administration. 11-3t

W. C. Prentiss, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Eileen A. Bailey**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of March, 1905. FANNIE B. COLONNA, Administratrix, by W. C. Prentiss, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,753. Administration. 11-3t

Henry V. Tulloch, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, Ohio, and Illinois, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth Delano Ames**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of March, 1905. JOHN GRIFFITH AMES, 1600 13th st. N. W., Wash. D. C.; BEN AMES, Mt. Vernon, Ohio; JOHN GRIFFITH AMES, JR., Jacksonville, Illinois. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,562. Adm. 11-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

Lyon & Lyon and Irving Williamson, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Sallie C. Meyer, Guardian, v. Sallie C. Meyer et al.
No. 3228. Guardian Docket.

The object of this suit is to sell the north half of sublot 27, square 435, Washington, D. C., of which Henry Wolfort died seized, and to reinvest proceeds under the provisions of section 156 of the Code of said District. On motion of the complainant, it is this 15th day of March, A. D. 1905, ordered that the defendant, **Roland Wolfort**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: James Tanner, Clerk. 11-3t

---

S. T. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Kinney, Deceased.
No. 12,755. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellen Isabel Kinney, it is ordered, this 14th day of March, A. D. 1905, that notice be and hereby is given to **Thomas Kinney, Catherine Kinney, Rose Kinney, and Mary Kinney**, of Brunswick, New Jersey, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

---

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration d. b. n. c. t. a. on the estate of **Catharine V. Whelan**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. WILLIAM T. FINN, Administrator, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,958. Adm. 11-3t

---

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.

William B. Peter et al. v. Martha C. Gibbs et al.
No. 28,896. Equity Docket No. —.

The object of this suit is to quiet title to lot 10, in square east of square 87 in the city of Washington, in the District of Columbia, and vest the same in the plaintiffs. On motion of the plaintiffs, it is, this 14th day of March, A. D. 1905, ordered that the defendants, **Jane Bell, Kate Offutt, John Peter, Evelyn McEnery, Minnie E. Thomas, Nellie Thomas, Virginia L. Thomas, Elizabeth Thomas, William E. Thomas, T. Charles Thomas, and James P. Thomas**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, jr. 11-3t

---

Legal Notices.

Alex. R. Mullowny, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Frank W. Godden, Deceased.
No. 12,741. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Rudolph Kauffman, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to **John Godden**, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

---

W. Mosby Williams, Solicitor

In the Supreme Court of the District of Columbia.

Lavinia Keen, Petitioner, v. Clemonts H. Howard Keen, alias, etc., et al., Respondents. Equity, No. 25,170.

The object of this suit is to obtain by petitioner a divorce from the respondent, Clemonts H. Howard Keen, on the ground of adultery. On motion of petitioner, it is this 15th day of March, 1905, ordered that said respondent, **Clemonts H. Howard Keen, alias Clemens Howard Keen**, and the corespondents, **Mary A. Brown, alias Mamie A. Keen, and Lizzie Payne, alias Lizzie Keen**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

---

William J. Miller, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James E. Miller**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. ELIZABETH J. MILLER, Executrix, by WILLIAM J. MILLER, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,866. Adm. 11-3t

---

Ralston & Siddons, Solicitors

In the Supeme Court of the District of Columbia.

Martin R. Ward v. George R. Devitt.
No. 25,184. Equity Docket 56.
ORDER OF PUBLICATION.

The object of this suit is to secure a decree directing the sale of goods, chattels, and personal property described in the bill of complaint and the exhibits attached thereto, and from the proceeds thereof to pay a note made by the defendant, and held by the complainant. On motion of the complainant, it is, this 10th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

Digitized by Google

Legal Notices.

SECOND INSERTION.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Susan E. Detrick, Deceased.
No. 12,786. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edward H. Thomas, executor, it is ordered this 7th day of March, A. D. 1905, that notice be and hereby is given to **Louis Edward Wright**, and to all others concerned, to appear in said court on **Wednesday, the 19th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-3t

Daniel W. O'Donoghue, Solicitor

In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¾ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.
mar. 10-17, apr. 7-14, may 12-19

Thos. J. Mackey, Solicitor

In the Supreme Court of the District of Columbia.
Annie M. Porter v. Ellis B. Porter.
No. 25,174. Equity Docket No. 56.

The object of this suit is to obtain a divorce on the ground of desertion and non-support, provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

Jas. F. Bundy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Henry W. White**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. BENJAMIN F. MORRISON, Bureau of Education. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,728. Administration. 10-3t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Florida, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Augusta Maria Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of March, 1905. FRANK T. RAWLINGS, 1505 Pa. ave. N. W., Wash., D. C.; WM. HENRY YOUNG, Athens, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,757. Administration. 10-3t

Lambert & Baker, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Margaret Burkhard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. FRANCESCA LITZ, 241 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,574. Administration. 10-3t

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

Digitized by Google

Legal Notices.

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Schu**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. CHARLES SCHU, 1867 Fla. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,591. Administration. 10-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Dadmun**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. ELIZABETH WILSON, 606 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,710. Administration. 10-3t

F. R. Keys, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Special Term in Equity.
Martha D. Schlosser v. Robert F. Schlosser.
Equity, No. 22,944.

On motion of the plaintiff, by F. R. Keys, her solicitor, it is ordered that the defendant, Robert F. Schlosser, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 10-3t

George P. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William O. Beckenbaugh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of November, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1904. MARGARET A. BECKENBAUGH, 2319 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,516. Administration. 10-3t

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Flannery**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. MICHAEL A. LYNCH, 219 G st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,669. Administration. 10-3t.

Legal Notices.

THIRD INSERTION.

John Raum, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of Pennsylvania, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily S. M. Chisolm**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of February, 1905. HENRY CLAY CHISOLM, WM. WALLACE CHISOLM, Huntingdon, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,708. Adm. 9-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John J. Halsted**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. PENNINGTON HALSTED, 49 Wall street, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,748. Administration. 9-3t

S. Herbert Giesy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William Hogan, Deceased.
No. 12,733. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry C. Birge and Lynndors S. Lucas, it is ordered this 2d day of March, A. D. 1905, that notice be and hereby is given to **Margaret Brisbane, Bertha M. Schlesinger, Margaret B. Schlesinger, and William Strong Hogan,** and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel L. Kelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **1st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1905. JULIA S. MCALLISTER, 940 K st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,729. Administration. 9-3t

OFFICIAL edition, United States Bankruptcy Law of July 1, 1898, and Amendments of February 5, 1903, with marginal notes and full Index. General Orders and Forms adopted by the United States Supreme Court, November 28, 1898. Price, paper, 50c; cloth, $1, delivered by mail. The only complete edition. THE LAW REPORTER CO., Printers, Stationers, and wholesale and retail dealers in Bankruptcy Supplies, Washington, D. C. M. W. Moore, Manager. Phone Main 828.

Digitized by Google

Legal Notices

Leckie & Fulton and Jos. W. Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John M. Mitchell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. EMMA F. MITCHELL, 729 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,707. Administration. 9-3t

---

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Conner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. MARY KIRKPATRICK, 1115 23d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,738. Administration. 9-3t

---

Frank J. Wissner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Zachary Boteler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. HARRY W. BOTELER, 3110 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,690. Administration. 9-3t

---

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick Folliard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1905. NORA FOLLIARD, 1101 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,665. Administration. 9-3t

---

In the Supreme Court of the District of Columbia.

William H. Hocke v. Sydney F. Marshall, Admr., et al.
Equity No. 23,455.

Sydney F. Marshall and Charles A. Douglass, trustees, having reported an offer from Alice E. Birtwell of $350 for subiot 34, in square 1095, in the city of Washington, District of Columbia, said offer, however, subject to the payment of 3 per cent commission, as set forth in said report, it it therefore, this 2d day of March, 1905, ordered that said offer be accepted and the sale of said lot ratified and confirmed on the **3d day of April, 1905**, unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 9-3t

Legal Notices.

William L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Pius Stang, Deceased.
No. 12,722. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Alexander Ebert, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Franz Anton Stang, Carl Stang**, brothers, and **Anna Stang and (?) Stang**, sisters of deceased, living in Koenigheim, near Tauberbischofsheim, Baden, Germany, and other unknown heirs, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

---

Milton Strasburger, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Deborah E. Whitmore, Deceased.
No. 12,708.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Scaggs, it is ordered this 28th day of February, A. D. 1905, that notice be and hereby is given to **Louisa Westerfield Vreeland** (non compos mentis), of Newark, New Jersey; **Cecilia Shelley**, of Danville, Illinois; **Maud V. Hart**, of New York City, New York; **Walter Hart**, of Baltimore, Maryland; **Mabel Schilling**, of Baltimore, Maryland; **John Elmer Hart** (minor), of New York City, New York, and **Annie Steinmetz**, of Dayton, Ohio, and to all others concerned, to appear in said court on **Monday, the 3d day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

---

George E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Harry U. Walton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. 9-3t

---

Coldren & Fenning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Frame**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1905. WILLIAM HAMILTON, Produce Exchange, New York. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,685. Administration. 9-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 • (WEEKLY) No. 12

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MARCH 24, 1905

CONTENTS.

Editorial 177
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
The Peoples National Bank of Charlottesville et al., appellants, v. James H. Saville et al. 178
The Columbian University et al., appellants, v. Brooke P. Taylor et al. 181
Orrin G. Staples, appellant, v. John C. Johnson. 183
Legal Notices 187

DECISIONS BY THE COURT OF APPEALS DURING THE PRESENT WEEK.

Validity of Act Providing for New Union Station.

In the case of Millard v. Roberts et al., the proceeding was brought by Millard against the Treasurer of the United States, the Commissioners of the District, the Baltimore and Ohio Railroad Company, the Philadelphia, B. and W. Railroad Company, and the Washington Terminal Company, to prevent payment to the two railroad companies of the sum of $1,500,000 each, as directed by the act of Congress providing for the new union station, and that providing for the elimination of grade crossings. The constitutionality of this legislation was attacked on two grounds, viz: That the acts in question were revenue measures, and should have originated in the House of Representatives, and not in the Senate, where they did originate; and that the legislation amounted to an appropriation of public money for private purposes. In regard to the first proposition the court holds that while general appropriation bills and revenue legislation must originate in the House of Representatives, this rule does not apply to legislation for another purpose, although an appropriation may be incidental to such purpose and necessary to give it efficiency.

As to the second contention, the court holds that the matter amounted to a contract between the United States and the District on the one hand and the railroad companies on the other, by which the latter surrendered certain rights and undertook the construction of improvements more extensive, perhaps, than was required for the purposes of the railroad companies; and even if the compensation was apparently excessive, that was a matter for the determination of Congress and not the courts. The decree of the court below dismissing the bill, upon demurrer thereto, is affirmed, in an opinion by Mr. Justice Morris.

Building and Loan Association; Settlement With Borrowing Stockholder.

In the case of Whelpley et al. v. Ross, the controversy was between a building and loan association and a borrowing shareholder respecting a settlement by the latter of a loan. The court below decreed a release of the deed of trust securing the loan, and also the payment to the appellee of an alleged overpayment on account thereof. The decree is modified by the Court of Appeals so as to relieve the association from this payment, and, as so modified, affirmed. Because of the meagre record in the case, the court declines to pass upon the question of whether the transaction was usurious, though intimating an opinion to the contrary. The opinion was delivered by Mr. Justice Morris.

Defective Sidewalks; Contributory Negligence; Judgment for Defendant Reversed.

In the case of Dotey v. District of Columbia, the plaintiff sued to recover damages for personal injuries alleged to have been sustained by reason of the defective condition of a sidewalk. The trial court held the plaintiff not entitled to recover, the accident having happened outside the line of the public sidewalk and within what is designated as the parking, and directed a verdict for defendant. The Court of Appeals, in an opinion by Mr. Justice Morris, reverses the judgment, holding that the case was one proper to be submitted to the jury.

Deed; Delivery.

In the case of Bunten v. American Security and Trust Company, the appeal was from a judgment in an action of ejectment tried by the court without a jury. The controversy was between the devisee under a last will and testament, as plaintiff, and the grantee in a deed in trust made by the testatrix in her lifetime; and the case turned upon the question whether there had been a delivery by the grantor, in her lifetime, of the deed in trust, so as to be effective and leave nothing for her to devise to

Digitized by Google

plaintiff. The trial court held there had been such a delivery, and rendered judgment for defendant, which is affirmed in an opinion by Mr. Justice Duell.

Decision in Knights of Labor Controversy Reversed.

In the case of Hayes et al. v. Burns et al. the controversy was between rival factions of the Knights of Labor, each claiming to be the legally constituted order and officers thereof. The proceeding was in equity, and was brought by Burns and others against Hayes and his associates, seeking to have complainants decreed to be the duly elected officers of the order and entitled to its property; to enjoin the defendants from removing the property from this District or from in any way interfering with it, and to compel them to turn such property over to complainants, etc. The defendants denied the allegations of the bill, and also that a court of equity had jurisdiction of the controversy.

Each of the rival factions claimed to have been elected officers of the order at the general assembly held in 1902, and defendants were in possession of the offices and property at the time of suit brought. The lower court decreed in favor of the complainants. The Court of Appeals, however, holds that the sole question at issue was which set of men were the legally elected officers of the order, the other relief sought being merely incidental thereto, and that this question was one a court of equity was without jurisdiction to decide. The proper remedy to determine the question of title to offices in a private corporation, such as the Knights of Labor, is by a quo warranto, provision being made in the District Code therefor. It not being competent for the equity court to determine this question, the Court of Appeals holds that the bill should have been dismissed. The decree is therefore reversed, with directions to dismiss the bill, in an opinion by Mr. Justice Duell.

Snow Regulation Held Invalid.

In the case of Coughlin v. District of Columbia the question was as to the validity of the regulation promulgated by the Commissioners of the District of Columbia providing for the removal of snow and ice from sidewalks. The Court of Appeals holds the regulation, which was copied from an old municipal ordinance of the city of Washington, invalid, denying the claim made by the Commissioners that they had power to resurrect and reenact it under the act of Congress of January 26, 1887, and the joint resolution of February 26, 1892. It is held that Congress alone, as the law now stands, has power to regulate the removal of snow and ice from the sidewalks, etc., and that the duty now rests upon the municipality to provide for such removal. The opinion was delivered by Mr. Justice Morris.

Court of Appeals of the District of Columbia.

THE PEOPLES NATIONAL BANK OF CHARLOTTESVILLE ET AL., APPELLANTS,

v.

JAMES H. SAVILLE ET AL.

INSOLVENT CORPORATION; UNPAID SUBSCRIPTIONS TO CAPITAL STOCK; EQUITY; SUIT BY CREDITORS; MULTIFARIOUSNESS.

1. The liability of a subscriber for the capital stock of a corporation is several and not joint, and creditors of an insolvent corporation can not in a single suit enforce against a number of the subscribers to its capital stock a liability for the unpaid portion of their subscriptions.
2. There is, in such a case, no such common interest as the law recognizes as a good ground for the prevention of multiplicity of suits.

No. 1428. Decided March 7, 1905.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,154, dismissing a bill filed by creditors of an insolvent corporation to enforce against numerous defendants alleged unpaid subscriptions to the capital stock of the corporation. Affirmed.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the appellants.

Mr. Fulton Lewis and *Mr. John Ridout* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

On June 18, 1891, there was organized, under the laws of the State of Virginia, a corporation designated as the Washington and Roanoke Land and Improvement Company, for the purpose of dealing in land in the city of Roanoke, in the State of Virginia, the principal office of which was to be in the District of Columbia, and of which the officers and a large number of the incorporators were residents of this District, although the certificate of incorporation declared that the principal office of the company should be located and its chief business transacted in the city of Roanoke. The capital stock of the company was to be not less than $175,000, nor more than $300,000, of the par value of $100 a share, to be paid as the board of directors might prescribe. How many shares of stock were taken does not appear; but it does appear that of the amount subscribed for there was payment made for one-half.

The enterprise resulted in failure. The company became embarrassed and insolvent; and judgments were rendered against it in the State of Virginia. Four such judgments are held by the four appellants here, aggregating upwards of $60,000 exclusive of interest, upon which writs of execution were issued, and returned unsatisfied.

On January 26, 1893, proceedings in equity were instituted by the insolvent company in the circuit court for Roanoke, against certain of the appellants here and certain other persons to vacate certain specified conveyances; and a cross-bill was filed, and certain other proceedings were had, with the result that the judgments rendered against the company were ad-

Digitized by Google

judged to be valid and subsisting liabilities; and John M. White, one of the appellees here, was appointed receiver of the company and ordered to collect the unpaid subscriptions. On October 5, 1900, the receiver reported that he was unable to collect any of the debts due to the company, and suggested that the creditors be decreed the amounts severally due to them, and receive separate executions therefor against the company. The suggestion was adopted by the court, and separate judgments were rendered for each of the creditors; but the executions issued thereon were returned unsatisfied.

Thereupon, on March 25, 1901, the proceedings now before us for review were instituted in the Supreme Court of the District of Columbia by the filing of a bill in equity in the names of the four creditors, who are here the appellants, for the purpose of reaching the unpaid subscriptions of the stockholders. The suit was instituted against the company and the receiver and forty-nine enumerated stockholders, or representatives of deceased stockholders, whose unpaid subscriptions amounted on 1,329 shares to $66,450. Discovery was sought specially against two of the corporators, and in a general way against all of them, of the books, papers, records, stock books, account books, and other papers of the company; and the chief prayer of the bill was that the unpaid subscriptions should be decreed to be a trust fund for the payment of the debts of the company, and "that the defendants, and each of them, or such of them as are solvent, be decreed to pay the debts and claims of the said complainants, said amount in no case to exceed the amount due by them and each of them upon their unpaid subscriptions."

The bill was met by four several demurrers, in one of which two defendants joined, in another thirteen defendants; and by a plea on the part of one defendant to the effect that he had never subscribed to the stock of the company, and was not the representative of any such subscriber. The death of two defendants was suggested; and thirty do not appear to have answered in any way, so far as the record before us shows. The company did not answer; but there was an answer by White, the receiver, as well as a cross-bill, which was not a cross-bill in fact, but an auxiliary bill in aid of the original bill, substantially setting up the same facts and praying the same relief.

The several demurrers interposed by the defendants differ somewhat in the grounds of objection which they suggest; but the chief grounds are that the controversy is one cognizable at common law, and not in equity; and that there is an improper joinder of several distinct causes of action against several defendants, and even against one and the same defendant.

The court below sustained the demurrers on this last ground, making no adjudication as to the others; and the complainants having elected to stand by their bill, it dismissed both the original bill and the cross-bill. From the decree of dismissal the complainants have appealed.

In sustaining the demurrers and dismissing the bill of complaint the court below seems to have based its action exclusively on the authority of the decision of the Supreme Court of the United States in the case of Hale v. Allinson, 188 U. S. 56; and we are of opinion that it was fully warranted in so doing. The principle of that case seems to us to be here directly applicable.

In that case a receiver appointed in the State of Minnesota for an insolvent corporation organized under the laws of that State, instituted suit in equity in the Circuit Court of the United States for the Eastern District of Pennsylvania, to enforce a statutory liability of stockholders of the corporation resident in Pennsylvania. It was held: (1) That no such suit could be maintained by a receiver outside of the State of his appointment, upon which proposition the rule laid down in the case of Booth v. Clark, 17 How. 322, and numerous subsequent cases, was reaffirmed; and (2) that whatever remedy existed in favor of the complainant was at law, and not in equity, the jurisdiction of which had been invoked on the ground of avoiding a multiplicity of suits. It was also held that the suit could not be maintained as an ancillary or auxiliary to the proceedings in Minnesota, and in aid of their enforcement.

With the first proposition here enunciated we are probably not concerned in the present case. For, although a foreign receiver comes in and sues by way of cross-bill, yet the main suit is not by him, but by creditors of the company, who may have an equity in their favor to reach the unpaid subscriptions as an equitable fund for the satisfaction of their debts. But the second proposition has a direct bearing on the case before us. Whether the suit is instituted by a foreign receiver or by creditors in their own right, the fact remains that there is an attempt here to combine forty-nine different, distinct, and separate suits in one. It is sought to enforce in one suit forty-nine distinct and independent contracts, which have no connection whatever with each other, further than that they are made with one and the same person as the obligee. But the fact that an obligee has forty-nine claims of the same nature and character against forty-nine different persons does not justify him in compelling those different persons to come into one suit, whether it be at common law or in equity, when there is nothing else in common between the parties. There is no common interest in such a case, such as the law would recognize as a good ground for the prevention of a multiplicity of suits. On the contrary, there is grave danger that such a combination of independent suits in one proceeding may entail far greater vexation, expense, and annoyance than it could possibly prevent.

In the case of Hale v. Allinson the Supreme Court of the United States quoted with approval and emphatically indorsed the views expressed in the case by the lower court, which are to be found in 102 Fed. Rep. 790, and which are as follows:

"In this question the interest of each stockholder is separate and distinct. The bill asserts the conclusiveness of the Minnesota decree upon the defendants, so far as the necessity for the assessment and the amount charged against each stockholder are concerned. Bank v. Farnum, 176 U. S. 640. Assuming that position to be

Digitized by Google

sound—and, if I do not so assume it—if these questions are still open for determination, so far as the Pennsylvania stockholders are to be affected, the bill must fail for want of necessary parties—it is clear that only two classes of questions remain to be decided. The first is whether a given stockholder was ever liable as such, and the second is whether, if he were originally liable, his liability has ceased, either in whole or in part.

"Manifestly, as it seems to me, the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant. The receiver's cause of action against each defendant is, no doubt, similar to his cause of action against every other; but this is only part of the matter. The real issue, the actual dispute, can only be known after each defendant has set up his defense; and defenses may vary so widely that no two controversies may be exactly or even nearly alike. If, as is sure to happen, differing defenses are put in by different defendants, the bill evidently becomes a single proceeding only in name. In reality it is a congeries of suits with little relation to each other, except that there is a common plaintiff, who has similar claims against many persons. But, as each of these persons became liable, if at all, by reason of a contract entered into by himself alone, with the making of which his codefendants had nothing whatever to do, so he continues to be liable, if at all, because he himself, and not they, have done nothing to discharge the liability.

"Suppose A to aver that his signature to the subscription list was a forgery; what connection has that averment with B's contention that his subscription was made by an agent who has exceeded his powers? or with C's defense, that his subscription was obtained through fraudulent representations? or with D's defense, that he has discharged his full liability by a voluntary payment to the receiver himself? or with E's defense, that he has paid to a creditor of the corporation a larger sum than is now demanded? These are separate and individual defenses, having nothing in common; and upon each the defendant setting it up is entitled to a trial by jury, although it may be somewhat troublesome and expensive to award him his constitutional right. But even if the ground of diminished trouble and expense may sometimes be sufficient, I should still be much inclined to hesitate before I conceded the superiority of the equitable remedy in this case. Such a bill as is now before the court is certain to be the beginning of a long and expensive litigation. The hearings are sure to be protracted. Several, perhaps many, counsel will no doubt be concerned, whose convenience must be consulted. The testimony will soon grow to be voluminous. The expense of printing will be large. The costs of witnesses will not in any degree be diminished; and, if some docket costs may be escaped, this is probably the only pecuniary advantage to be enjoyed by this one cumbersome bill over separate actions at law."

The Supreme Court has been at pains to reproduce this portion of the opinion of the circuit judge as fully embodying its own views upon the subject; and for that reason we can do no better than reproduce it here. It seems to us to be conclusive of the subject-matter of controversy in the present case.

It is sought to differentiate the present case from that of Hale v. Allinson on the ground that this is a suit by creditors, and not by a foreign receiver, and that creditors must necessarily go into a court of equity in order to reach unpaid subscriptions of stockholders. Yet this does not reach the difficulty. Conceding, without determining the question, that the remedy of creditors in such cases is in equity, and not at common law, yet no more in equity than at common law is it allowable to join distinct and independent causes of action against different persons in no way connected with each other. The propostion to reach unpaid subscriptions for the payment of debts of an insolvent company is in no way different from an attempt to reach any other equitable assets.

If a judgment creditor is compelled to go into equity to reach equitable assets of his debtor, and upon one transaction A is alleged to hold some such assets, and upon another and wholly distinct transaction B is alleged to hold similar assets, we know of no rule of equity or of propriety that would justify the joinder of A and B and of the two transactions in one suit. A and B are entitled to stand alone, each for himself, and not to be involved in the litigation of each other. This would seem to be eminently reasonable; and this is what we understand to have been determined in the case of Hale v. Allinson.

It is claimed that there was a different ruling in the case of Hatch v. Dana, 101 U. S. 205. But it is conceded on behalf of the appellants that the case of Hatch v. Dana is not in conflict with the later case, and we are therefore not called upon to distinguish between the two. Moreover, the point made in the case of Hale v. Allinson does not seem to have been made in the case of Hatch v. Dana. In fact, in the case of Hatch v. Dana the contention was directly the reverse—that is, that all the stockholders should have been made defendants to the suit; and this contention the court overruled. The court there said:

"The liability of a subscriber for the capital stock of a company is several, and not joint. By his subscription each becomes a several debtor to the company, as much so as if he had given his promissory note for the amount of his subscription. At law, certainly, his subscription may be enforced against him without joinder of other subscribers, and in equity his liability does not cease to be several. A creditor's bill merely subrogates the creditor to the place of the debtor, and garnishes the debt due to the indebted corporation. It does not change the character of the debt attached or garnished." Hatch v. Dana, 101 U. S. 205-210.

Of course, if a liability is several, and neither joint nor joint and several, it is not competent for him who would enforce it, whether it be the original creditor or a representative of such original creditor or any person who becomes subrogated by operation of law to the place of such original creditor, to bring it into what might possibly be called hotchpot with other similar liabilities of other persons. Whether the remedy is at law or in equity, it is to be pursued indi-

Digitized by Google

vidually against each subscriber in separate suits; and no two or more subscribers are to be joined together in one suit merely by reason of the fact that they are subscribers to the same capital stock of the same company.

Such being, as we are advised, the rule laid down by the Supreme Court of the United States, we must hold that the court below was right in its application. The decree appealed from will be affirmed, with costs. And it is so ordered.

Affirmed.

THE COLUMBIAN UNIVERSITY ET AL., APPELLANTS,

v.

BROOKE P. TAYLOR ET AL.

EQUITY PRACTICE; DEMURRER; SPECIAL CHARITABLE TRUST; FAILURE OF TRUST; RESULTING TRUST; LACHES.

1. A devise to an incorporated institution of learning in trust to devote the rents and profits thereof to the free education of "such young men as may desire to take advantage of the endowment," in order to fit them for admission to the Naval Academy of the United States, creates a special charitable trust; and such trust is not void for uncertainty or incapacity of execution apparent upon its face.
2. The invalidity of such trust not being apparent on its face, an allegation of such invalidity in a bill seeking to avoid the trust and for an accounting of rents and profits, is a mere conclusion of law not admitted by a demurrer; and a demurrer alleging the want of jurisdiction in equity is properly overruled.
3. Where, in such a case, the bill, filed more than fifteen years after the devisee entered into possession of the property, alleged that after efforts to carry out the intention of the testator the incapacity of the execution of the trust had been demonstrated, but it did not appear when the trust certainly came to this end, a demurrer to the bill on the ground of laches is properly overruled.
4. The trust created by the will not being a general charitable trust, but one expressly limited to the purposes specified, if the trust has failed of its object and thereby come to an end, a resulting trust at once arose in favor of, the heirs of the testator, enforcible in equity.

No. 1497. Decided March 7, 1905.

APPEAL (specially allowed) by defendants from an order of the Supreme Court of the District of Columbia, in Equity, No. 24,288, overruling a demurrer to a bill in equity seeking to avoid a trust, etc. Affirmed.

Mr. W. F. Mattingly and *Mr. John B. Larner* for the appellants.

Mr. Henry E. Davis for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is a special appeal allowed by order of this court from an order overruling appellant's demurrer to a bill in equity.

The bill filed by appellees as heirs at law of Levin M. Powell, deceased, seeks to avoid a trust created by the will of said Powell, and to recover certain real estate in the city of Washington, and to have an account and recovery of the revenues thereof.

It is alleged that said Levin M. Powell, an admiral on the retired list of the United States Navy, died January 15, 1885, leaving a will that had been executed October 27, 1884. The paragraph of the will which creates the trust reads as follows:

"Item:—Fifth, it being my wish and desire to make some contribution to the Navy of the United States, of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and to that end to establish in the Columbian University in the District of Columbia, in a manner most conducive for that purpose, a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the Navy of the United States, or for the places of mates or captains in the merchant marine service of the United States, I do hereby give, devise, and bequeath to the said Columbian University and its successors all those certain pieces or parcels of ground situate and lying in said city of Washington, and known and distinguished on the plats of said city as lot lettered C, and the east five feet from front to rear of lot D, of Samuel D. King's subdivision of lots numbered one (1), two (2), three (3), thirty-two, and thirty-three (33), in square numbered one hundred and twenty-six (126), duly recorded in the surveyor's office of said city, beginning for the said parcel at a point on I street north, distant seventy-eight (78) feet west from the corner of I and 17th street, and running thence north parallel with 17th street one hundred and five (105) feet to a fifteen foot alley; thence west with said alley thirty-five (35) feet; thence south one hundred and five (105) feet to the north line of said I street; thence east with said I street thirty-five (35) feet to the point of beginning, together with all and singular the improvements, rights, privileges, and appurtenances to the same belonging, in trust for the purposes following, and for no other purpose whatever—that is, in trust to create an endowment to be known as the Admiral Powell endowment, and with that view to take the said property, and the same to rent from year to year or to lease for a term of years as to the trustees and overseers of said university shall seem best; and the rents, issues, and profits arising therefrom, after first paying out of the same the taxes, insurance, repairs, and other expenses, to devote as far as the same will go, under such regulations as to the said trustees and overseers may seem best, to the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become mates or masters in the merchant marine service of the United States, such preparation to be confined in the case of each young man so embracing the advantages of the said endowment to one year, and to include principally the studies following—that is to say, arithmetic, geometry, trigonometry, and astronomy, with the use of astronomical instruments, the construction of charts, and the application of this knowledge to hydrographical survey by latitude and longitude, and if possible such study as will give to such young men a

Digitized by Google

knowledge of scientific voyages of discovery, and other matters relating to war and commerce on the high seas, and it is further my desire that this endowment shall, if possible, embrace in its benefits such apprentices as having filled their time in the great steam manufactory establishments of the country may apply for appointment from civil life in the steam engineer department of the United States Navy, to such I would like to have a year's education afforded under such regulations as the president and faculty of the university may think proper; and should it at any time for any reason be impossible to carry into effect the trusts, provisions, and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified, then, and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end, and upon the happening of the contingency mentioned, I do hereby give, devise, and bequeath the said property to the Johns Hopkins University of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said university or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect."

The bill then proceeds to charge:

"VIII. That acting upon its supposed right under said devise, the said defendant, the 'Columbian University,' some time in the year 1885, took possession of said premises and real estate upon the trust set forth in said will and has had and retained absolute possession of the same ever since as it does now, having had the same rented to various tenants during said time.

"IX. That said defendant, the Columbian University, issues and has for more than sixteen years issued a catalogue, publishing its classes, the names of all its students, its instructors and officers, and the many and various schools of education it maintains; that this catalogue is widely circulated throughout the United States; that among other things it has from to time, during the past sixteen years, advertised 'the Powell scholarships;' that such advertisement was contained in the said catalogue for the scholastic years of 1900 and 1901, as will more particularly appear by reference to pages 94 and 95 of said catalogue, which is herewith filed as Exhibit No. 3, and which it is prayed may be taken and considered as a part hereof. That substantially the same advertisement has been inserted in said catalogue issued from time to time for the past sixteen years; that, notwithstanding the said wide circulation of said advertisements the said defendant, complainants are informed, believe, and therefore charge, has been wholly unable to execute said trust.

"X. That the complainants are advised and therefore charge and allege that said devise is so indefinite and the trust intended to have been created thereunder so uncertain as to its objects and subjects that it was impossible of execution by said defendant, the 'Columbian University,' or by the said defendant, the 'Johns Hopkins University,' has in no wise been executed by either of them in any respect whatsoever, and that it is now and ever will be impossible of execution by either of them.

"XI. That the complainants are advised and therefore charge and allege that by reason of the indefiniteness of the purposes of said intended trust, and the hopeless uncertainty of the possible beneficiaries, 'who may desire to take advantage of said endowment,' the said devise and the trust sought to have been created thereunder is wholly void and of none effect.

"XII. That complainants are advised and therefore charge that the defendants are without authority to carry said trust into execution."

The prayers are that the paragraph of the will before set forth be decreed to be void; that the trust be declared void, and the title to the premises be declared to be in the complainants; that the Columbian University be required to render a full account of the rents and profits of the said premises, and to pay over the sum ascertained to be due; that all necessary orders and references may be made, and for such other and further relief as the nature of the case may require.

1. For the purpose of determining the errors assigned on the order overruling the demurrer, the appellants insist that they have fully admitted the invalidity of the devise as contended for by the appellees. We can not proceed upon this assumption. The paragraph of the will set out in the bill speaks for itself, and the charge that it is void is a conclusion of law, which can not be admitted by demurrer as would be an allegation of fact. If, as contended by one party, and, for the purposes of the demurrer, admitted by the other, the invalidity of the devise is apparent upon its face, the appellees might probably have maintained an action of ejectment against the Columbian University to recover the possession of the premises. Ould v. Washington Hospital, 95 U. S. 303. But this action could not be maintained against the Johns Hopkins University, which is not a sharer of that possession, and which would not be bound by a judgment obtained against its codefendant. For the reason that the cause of action involves the construction of a trust, which is a matter peculiarly of equity jurisdiction, as well as the avoidance of a multiplicity of suits, where the defendants have a common interest in the essential questions of law and fact, it may be that the appellees would, at least, have their election to proceed in equity as they have done. 1 Pom. Eq., sections 139 and 181. However, under our construction of the paragraph of the will creating the trust, it is not necessary to determine whether the jurisdiction in equity is maintainable upon those grounds. In giving this construction we have been somewhat embarrassed by the admissions of the appellants and their failure to argue the question upon its merits.

We are of the opinion that the provision of the will providing for the free education of young men in order to fit them for admission

Digitized by Google

to the Naval Academy of the United States, and making a devise therefor in trust to an incorporated institution of learning, creates a special charitable trust. Vidal v. Girard, 2 How. 127, 192 et seq.; Ould v. Washington Hospital, 95 U. S. 303; Speer v. Whitney, 32 W. L. R. 678; 2 Pom. Eq., secs. 1019, 1020, 1021, 1022, 1023, 1024.

We are also of the opinion that the trust is not void for uncertainty, or incapacity of execution apparent upon its face.

As said by Mr. Pomeroy: "One of the distinguishing elements of a 'charitable' as compared with an ordinary trust consists in the generality, indefiniteness, and even uncertainty which is permitted in describing the objects and purposes of the beneficiaries. From the very definition of a 'charitable trust' the beneficiaries are always an uncertain body or class; but the doctrine goes further than this. If the donor sufficiently shows his intention to create a charity, and indicates its general nature and purpose, and describes in general terms the class of the beneficiaries, the trust will be sustained and enforced, although there may be indefiniteness in the declaration and description, and although much may be left to the discretion of the trustees." 2 Pom. Eq., sec. 1025; Ould v. Washington Hospital, etc., 95 U. S. 303, 311; Speer v. Whitney, 32 Wash. Law. Rep. 678.

Under this construction the legal title passed to the trustee under the devise, and hence the court was right in overruling the demurrer on the ground of want of jurisdiction in equity.

2. If the invalidity of the devise were apparent upon its face, the objection on the ground of laches in bringing the suit would be fatal, for a court of equity, in a case like this, should, by analogy, apply the rule of the statute of limitations, which bars an action of ejectment after fifteen years from the time the right to maintain the action shall have accrued. Code D. C., sec. 1265. By the allegations of the bill, more than fifteen years elapsed between the time that the Columbian University entered into possession under the devise and the commencement of the suit, and there is nothing to show that the appellees were at that time under a disability of any character.

But, as we have seen, the right of action did not accrue immediately upon the entry of the Columbian University into possession under the devise. If there be a right of action at all it must fall under the ninth paragraph of the bill, which alleges that after efforts made to carry out the intention of the testator the incapacity of the execution of the trust has been demonstrated. The trust created by the will is not a general charitable trust, but is expressly limited to the purposes specified, and no other. If the trust has failed of its object by reason of the facts alleged, and thereby come to an end, a resulting trust at once arose in favor of the heirs at law of the testator, enforceable by this proceeding in equity. Hopkins v. Grimshaw, 165 U. S. 342, 353.

As it does not appear when the trust certainly came to this end, the learned justice presiding in the equity court did not err in holding that the right to maintain the suit had not been lost by laches on the part of the complainants.

The order will therefore be affirmed, with costs, and it is so ordered. Affirmed.

Court of Appeals of the District of Columbia.

ORRIN G. STAPLES, APPELLANT,
v.
JOHN C. JOHNSON.

MALICIOUS PROSECUTION; PROBABLE CAUSE; EMBEZZLEMENT; INSTRUCTIONS.

1. To maintain a suit for malicious prosecution it is incumbent on the plaintiff to prove both malice and want of probable cause; but where there is any proof of malice and want of probable cause it is the duty of the court to submit the case to the jury.
2. The retention of money without concealment and under a claim of right made in good faith, is not embezzlement; and the question whether the claim be well-founded is immaterial.
3. Plaintiff was employed by defendant as night clerk in a hotel, and as such was given $10 with which to make change for patrons. He was discharged without notice and for a trivial cause, and at the time was paid a small sum which defendant claimed to be due him; but plaintiff, claiming to be entitled to more, refused to return the $10. Defendant retained his baggage and plaintiff recovered judgment in replevin. Defendant thereupon procured the arrest of plaintiff upon a charge of larceny, but before doing so consulted counsel and the prosecuting attorney, making no mention of plaintiff's claim. The larceny charge was dismissed, and defendant, after again consulting the prosecuting attorney and telling him of plaintiff's claim, but not of the replevin suit, made affidavit charging plaintiff with embezzlement, and he was arrested and held for the grand jury, which ignored the charge. Upon these facts, held, that the trial court properly refused to direct a verdict for defendant.
4. A prayer of defendant that if the jury found that defendant, at the time of his discharge, had the $10 in his possession, and refused to surrender it, alleging defendant to be indebted to him in some indefinite amount, which claim was unfounded and that nothing was due him, then defendant had probable cause for charging him with embezzlement, held properly refused as being too indefinite and uncertain, and as failing to take into consideration plaintiff's good faith in making the claim.

No. 1473. Decided March 7, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,626, entered upon the verdict of a jury in an action for malicious prosecution. Affirmed.

Mr. A. A. Birney and *Mr. H. F. Woodard* for the appellant.

Mr. A. A. Lipscomb, *Mr. F. Edward Mitchell*, and *Mr. D. W. Baker* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is from a judgment entered upon the verdict of a jury in favor of the appellee, the plaintiff below, for the sum of $2,500, with interest thereon from June 14, 1904, and for costs. The suit was one for malicious prosecution and the facts, so far as material to the determination of the questions involved in the appeal, are these:

The appellee on December 2, 1901, was in appellant's employ as night clerk at the Riggs House, at a monthly compensation of $20, with board and lodging, when, without notice and without reason assigned, he was discharged. He had been in the same employ and in various capacities for about three years. He had been night clerk for over a year and a half and as night clerk he was given $10 with which to make change for the patrons of the hotel. As he was about going off duty on the morning of his discharge the appellant directed him to go to a store and have a man sent to the hotel to lay carpets. He made no reply, but

Digitized by Google

shortly went to the hotel dining room for his breakfast, and while eating it the appellant came to him and asked whether he had been on the errand, and learning that he had not, in a rough manner discharged him and told him to go to the office and get his pay. Later in the day he was given a small sum, stated to be the amount due him up to the time of his discharge. He made no objection to the amount at the time of the discharge. He gave up the key to his money drawer, and the clerk opening it and not finding the ten dollars, asked for it. He replied that appellant owed him more than that amount and that he would not pay it until he had a settlement. On going for his baggage he was told that it was locked up. He replevined it and judgment was given in his favor with costs, which appellant paid. On December 9, and after judgment had been awarded him in the replevin proceedings, he was arrested on a warrant sworn out by appellant charging him with larceny of the ten dollars, and was taken to the police station house but not detained. Later he gave bail, and finally, on December 19, a "nolle pros." was entered. On the same day he was arraigned in the Police Court, on the charge of embezzlement of the ten dollars, on a warrant sworn out by appellant. He was held to await the action of the grand jury, and later was discharged, the grand jury ignoring the charge.

Testimony was given to show that he was of good reputation for honesty and integrity prior to his arrest.

Before making the affidavit upon which the first arrest was made, appellant consulted his counsel, a reputable attorney, and informed him of appellee's employment, discharge, payment of wages as already stated, his retention of the ten dollars, and his refusal to return it. He did not inform his attorney that appellee claimed that money was due from him. He went with his attorney to the United States attorney for the District and stated to him the same facts. The latter directed him to go to the Police Court and take out a warrant for the arrest of the appellee for larceny. After that, and before making the affidavit upon which the warrant for embezzlement was issued, he informed the assistant United States attorney, prosecuting at the Police Court, of the same facts and of appellee's claim that appellant owed him money, whereupon he was advised to make the affidavit charging embezzlement. At no time did he inform his counsel, the United States attorney, or the assistant United States attorney, that appellee had brought a replevin suit against him to recover his baggage, and recovered judgment for costs, which he paid.

At the conclusion of the trial the appellant asked the court to give to the jury the four following separate instructions:

"1. The jury are instructed that upon the whole evidence their verdict should be for the defendant, and they should so find.

"2. It is not sufficient to entitle the plaintiff to recover that the jury should believe that he was in fact not guilty of the offense charged in the warrant for embezzlement, and was wrongfully arrested and prosecuted; it is also incumbent upon him to satisfy the jury, by a preponderance of proof, that in the prosecution of the charge of embezzlement the defendant acted without probable cause, and was actuated by improper and malicious motives.

"3. If the jury believe from the evidence that the defendant Staples acted on the advice of legal counsel in making the affidavit upon which the warrant for embezzlement issued, and under an honest belief that he was taking only such action as was warranted by law, he having first given a full statement of the facts of the case to counsel, the verdict should be for the defendant.

"4. If the jury find from the evidence that the plaintiff was in the employ of the defendant as night clerk, at defendant's hotel, and that as such clerk he was entrusted by defendant with ten dollars with which to make change for patrons of the hotel, and that such money was to be kept by the plaintiff in a particular drawer in the hotel office desk; and further find that at the discharge of the plaintiff from his employment on December 2, 1901, it was found he had taken the money in question from said drawer, and had it in his possession; and further find that plaintiff refused to surrender said sum of money, but kept the same, alleging that the defendant was indebted to him in some indefinite amount, and further that such claim by the plaintiff was unfounded, and that nothing was due him, then they are instructed that the defendant had probable cause for charging the plaintiff with embezzlement, and the verdict should be for the defendant."

The presiding justice granted the second and third prayers and refused the first and fourth. The appeal is based upon the alleged errors of the trial justice in refusing the first and fourth prayers.

Undoubtedly, to maintain a suit for malicious prosecution, it is necessary for the plaintiff to prove both malice and want of probable cause. In the case at bar such malice and probable cause must relate to the prosecution by appellant of the charge of embezzlement.

The appellee was not guilty of embezzlement because the money was retained without concealment and under a claim of right evidently made in good faith, and whether it was well founded or not is immaterial. If there was any proof of malice and lack of probable cause in the prosecution, it was clearly the duty of the trial justice to submit the case to the jury. Malice is a question exclusively for the jury, and while probable cause is a mixed question of law and fact, becoming a question of law after the facts are ascertained, and devolving upon the court the duty to instruct the jury as to the law arising upon the facts, the trial justice in view of the proofs in the case at bar would clearly have erred had he granted the first prayer and instructed the jury to find for appellant. There was evidence which required that question to be submitted to the jury. Appellant did not prefer the charge in hot blood. He was deliberate in all his actions. The appellee had been in his employ for something like three years. He was a man of good reputation. He had been trusted by appellant for a year and a half with the small sum he was charged with embezzling. He had been discharged without notice and for a trivial cause. There was enough in the facts to warrant the consideration by the jury of the question of malice. The ap-

Digitized by Google

pellant relies upon the advice of counsel as establishing probable cause. It was a question for the jury to say upon the evidence whether the advice of counsel was sought and acted upon in good faith and whether there was a full and fair disclosure of the facts. The third prayer, being one of those granted by the trial justice, correctly stated the law which should govern the jury in the consideration of the facts offered to prove probable cause. We think the charge was all that appellant was entitled to on the question of probable cause. Even conceding that the jury should not have been permitted to consider the evidence relating to probable cause, and that it was the province of the court to say that all the material facts had been stated by appellant to counsel and that he had acted in good faith, we may ourselves inquire whether there was probable cause, and if so, refuse to reverse the judgment. In Pangburn v. Bull, 1 Wend. 345, Judge Nelson (afterward associate justice of the United States Supreme Court) said, in referring to this question:

". . . still when the question of probable cause is submitted to a jury, who find for the plaintiff, and the court, on a review of the case, are satisfied that there evidently was a want of probable cause, and that the jury has not erred in point of law, the judgment will not be reversed for the error of the court in submitting the question to the jury."

We think the jury was warranted in finding want of probable cause. The trial justice was correct in his refusal to grant the first prayer. The fourth prayer was rightfully refused by the trial justice. Of the claim made by appellee that the appellant was indebted to him it is not necessary that the indebtedness should have been for a liquidated amount. If it be meant by the term "indefinite amount," employed in the prayer that it was for an unliquidated amount, the contention is not well founded. If it means something else, then the term itself is subject to the criticism of being indefinite. Furthermore the prayer was not one that could have been correctly granted, for, though appellee's claim may have been "unfounded," the question of his good faith in making it was also to be taken into account. The prayer was too indefinite and uncertain to be granted.

Believing that no error was committed by the trial justice in refusing to charge the first and fourth prayers, it follows that the judgment of the court below should be affirmed with costs, and it is so ordered.

Affirmed.

Negligence of Parents as a Defense to Actions for Injuries to Children.

[New York Law Journal.]

The decision of the Supreme Court of North Carolina, in Davis v. Seaboard Air Line Ry. (October, 1904, 48 S. E. 591), brings up again for discussion the subject of the negligence of parents as affecting the right of recovery for injury to children. The rule seems to be well settled, the present opinion citing many cases in its support, that where the action is directly for a parent's benefit, the latter's contributory negligence in allowing the child to go into an unsafe place is a good defense. This case would also seem to hold in common with other cases that in an action brought by a parent as administrator, if he be also the sole beneficiary, his contributory negligence is fatal to recovery. There could be no objection to this position except an entirely formal and technical one. As matter of fact, in the North Carolina case a judgment for the plaintiff was reversed because the question of the father's contributory negligence (he being the suing administrator) was not submitted to the jury. It appeared, however, that the deceased child left a mother as well as a father, and the court suggests a serious difficulty in the following extract from the opinion:

"Under our Code (sec. 1478), where there is no widow, nor child, nor representative of a child, the estate of an intestate 'shall be distributed equally to every next of kin who are in equal degree.' The father and mother are, of course, 'next of kin in equal degree.' Under our former system, under which the personality of the wife became the property of the husband upon its receipt, of course, the husband was sole legatee of an infant child dying unmarried and without children. Constitution, article 10, section 6, now provides that 'all property, real and personal, to which she (a married woman) may, after marriage, become in any manner entitled, shall be and remain the sole and separate property of such female.' This seems reasonably clear, and it may well be that the wife, jointly with the husband, is the beneficiary of the action brought by the administrator of an infant child in cases like this. We refrain from passing upon the point because it is not raised in this record, but it may become pertinent in another trial. Interesting questions may arise where one parent is guilty of contributory negligence and the other is not.

"This point is presented in Wolfe v. RR. (55 Ohio St., 517, 536, 45 N. E., 708, 711, 36 L. R. A. 812) and RR. v. Gravitt (93 Ga., 369, 20 S. E. 550, 26 L. R. A., 553, 44 Am. St. Rep. 145), in both of which it is held that 'the defense of contributory negligence is available as against such beneficiaries as by their negligence contributed to the death of the deceased, but the contributory negligence of some of the beneficiaries will not defeat the action as to others who were not guilty of such negligence.' Of course, as in all other cases, the preliminary question to be decided is whether there was contributory negligence of one parent (or both) which was the proximate cause of the death, i. e., whether the defendant had or not the 'last clear chance' to avoid killing the intestate. Pickett v. RR., 117 N. C. 616, 23 S. E. 264, 30 L. R. A. 257, 53 Am. St. Rep. 611; Lassiter v. RR., 133 N. C. 247, 45 S. E. 570."

The actual decision being as above stated, this case, apparently, is authority for the proposition that the issue of the contributory negligence of the parent suing as administrator is material as a defense, where he is one of the beneficiaries of the child's estate.

The trend of the decisions very clearly is toward not permitting a negligent parent to profit by his own wrong, and in such view the question is renewed whether recognition of the New York doctrine of imputed negligence,

Digitized by Google

vulnerable as it may be on abstract grounds, does not in the long run work substantial justice much more effectually than its denial. As a rule, the persons to be benefited by the recovery for an injury to a young child are its parents. Allowing recovery in such cases makes for the encouragement of the same neglect of children for speculative purposes which has, almost everywhere, led to limitations upon the amounts for which insurance may be procured on children's lives. Administration of the doctrine of imputed negligence would tend to obviate the perplexing questions as to parties to the recovery and the bearing as defenses of contributory negligence of different beneficiaries, which are suggested in the extract from the opinion of the North Carolina court above quoted.

Insurance—Assessment—Apportionment.

The Supreme Court of California held, in the case of Benjamin v. Mutual Reserve Fund Life Association, that where an assessment insurance certificate and the constitution of the association at the time the certificate was issued provided that whenever the death fund should be insufficient to meet existing claims an assessment should be made upon the "entire membership in force at the date of the last death, the same to be apportioned among the members according to the age of each member," subsequent resolutions of the association classifying the members and placing all the members who entered prior to a date subsequent to that at which the certificate was issued in a class by themselves, and providing that as to such members the assessments should be apportioned according to the age of the member, but that as to members joining the association since that date the assessments should be apportioned as of the age of their entry into the association, were inoperative and void as against the holders of such certificates.

Dead Dog Leaves a $10,000 Estate.

Judge Francis W. Downs, of Binghamton, N. Y., today made application for the appointment of an administrator for the estate of his dog, Lee, which was run over by a fire engine and killed last week. Since his death, Lee has lain in state in a white casket covered with flowers. The body will be put in a receiving vault and kept until spring, when it will be buried.

Judge Downs, several years ago, bought $20,000 worth of western mining stock, which for a long time was supposed to be worthless. About a year ago it was announced that an assessment was to be made on this stock. In order to avoid paying the assessment, Judge Downs formally transferred his stock to Lee. The assessment was not made, however, and the mining stock soon began to appreciate in value, until it is said to be worth $10,000.

Now Judge Downs wants to regain the stock, but the only way will be to have the estate of the dog settled up by an administrator. Inasmuch as the dog died intestate, the question arises whether Judge Downs will be able to prove that he is next of kin to Lee, and legally entitled to the estate.—Central Law Journal.

It is only when a petition to vacate an order confirming a composition shows that upon the facts therein alleged the petitioner can not in any circumstances be entitled to relief that leave to file such a petition should be refused. In re Allen B. Wrisley Co., 13 Am. B. R. 193.

A creditor who, by an assignment induced by the alleged false representations of the trustee and bankrupt, has parted with all title to his claim against the estate can not assail a composition, nor move to vacate its confirmation. Id.

A trustee in bankruptcy should not be interested in any scheme of composition with creditors, and where, by concealment or false representations in aid of the bankrupt, he induces creditors to act contrary to their interest, he should be removed and a composition thus entered into annulled. Id.

The plaintiff in a judgment creditor's action to set aside alleged fraudulent transfers of property by the judgment debtor, having alleged that the defendant was insolvent in obtaining the appointment of a receiver, is estopped from denying it when other creditors institute proceedings in bankruptcy, based on such appointment. Id.

When, in a judgment creditor's suit, a receiver has been appointed of substantially all the assets which can be made available for the payment of the judgment debtor's liabilities, and the complaint and affidavits upon which the application for the appointment of a receiver is made, assert as one of the grounds for the application that the judgment debtor is insolvent, an act of bankruptcy has taken place, and the other creditors are entitled to institute proceedings in involuntary bankruptcy against the debtor upon that ground. Id.

Where the mortgagee under a chattel mortgage, given more than four months prior to the filing of the mortgagor's petition in bankruptcy, takes actual possession of the mortgaged property, after the mortgagor had been adjudged bankrupt and the trustee in bankruptcy brings suit in the State court to recover the value of the property as upon an implied assumpsit, he is bound by a judgment dismissing the complaint with costs, and where the question of the validity of the mortgage, and whether or not defendant unlawfully converted the property, were involved and necessarily passed upon, the judgment is on the merits and res judicata. In re Reynolds, 13 Am. B. R. 245.

While the lien of a levy under a fi. fa. upon the goods of a bankrupt antedating over four months the debtor's voluntary adjudication as a bankrupt, is not divested by the bankruptcy proceedings, a sale by the sheriff on a vend. ex. will be stayed and the trustee in bankruptcy may sell the goods, subject to the rights of the execution creditor to be paid out of the proceeds of sale. In re Vastbinder, 13 Am. B. R. 148, distinguishing Metcalf v. Barker, 9 Am. B. R. 36.

The right to enforce an assignment of wages to be earned in the future, made by the assignor prior to his adjudication as a bankrupt, is not affected by his discharge in bankruptcy. Mallin v. Wenham, 13 Am. B. R. 210.

Digitized by Google

Where the undisputed evidence shows that a creditor prosecuting a suit in which property claimed by the bankrupt is exempt has been attached holds prima facie waiver contracts of the bankrupt's rights of exemption, the bankruptcy court has no jurisdiction to enjoin the suit, nor to determine whether or not the bankrupt could avoid such waiver contracts. Roden Grocery Co. v. Bacon, 13 Am. B. R. 251.

A statutory lien, filed within the time prescribed by the statute, is protected if otherwise valid, although not filed until after the debtor's adjudication as a bankrupt. In re Lillington Lumber Co., 13 Am. B. R. 153. See, also, Fehling v. Goings, 13 Am. B. R. 154; Crane v. Smythe, 11 Am. B. R. 747; Matter of Roeber, 9 id. 778; In re Mero, 12 id. 171.

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1004 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Andrew Y. Bradley, Attorney.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Baldwin S. Moore, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. ORRA G. MOORE, 1732 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,779. Administration. 12-3t

Jos. T. Ferry, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James Ferry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH T. FERRY, 1200 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,781. Administration. 12-3t

Legal Notices

Wolf & Rosenberg, Attorneys

In the Supreme Court of the District of Columbia.
Holding a Probate Court.
In re Estate of John Curtis, Deceased.
No. 11,974. Admr.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 24th day of September, 1900, purporting to be the last will and testament of John Curtis, deceased, has been returned as to Thomas E. Waggaman and Patrick Curtis "not to be found," it is, this 21st day of March, A. D. 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the 18th day of April, 1905, and that this order and a copy of the said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period of time in The Washington Times. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

ISSUES.

1st. Was the said John Curtis at the time of the alleged execution of the said paper writing dated September 24, 1900, of sound and disposing mind and capable of executing a valid deed or contract?

2d. Was the execution of said paper writing dated September 24, 1900, by John Curtis procured by undue influence or misrepresentation or artifice exercised upon or practiced against said John Curtis by any person or persons? 12-4t

Edw. E. Hohnan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William W. Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. EDWARD B. HOHNAN, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,682. Administration. 12-3t

Edward S. Bailey and Tucker & Kenyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James Hayes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 16th day of March, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH H. CURRAN, 315 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,161. Administration. 12-3t

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Kate F. Steele, Complainant, v. William Masi et al., Defendants.
No. 21,010. Equity Docket 48.

Guy H. Johnson and Wilton J. Lambert, trustees, having reported to the court the offer of John Mariner to purchase the original lot numbered eleven (11) in square numbered two hundred and eighty-eight (288), improved by premises No. 723 Thirteenth street northwest, in the city of Washington, District of Columbia, for the sum of thirty thousand dollars ($30,000), payable all cash, and subject to a commission of seven hundred dollars ($700.00) to Moore & Hill (inc.), it is, by the court, this 23d day of March, A. D. 1905, adjudged, ordered, and decreed that upon compliance with the terms of said offer the same be accepted and the sale of said property to said John Mariner be ratified and confirmed, unless cause to the contrary be shown on or before April 25, 1905. Provided a copy of this order be published once a week for three (3) successive weeks before said day in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

Digitized by Google

Legal Notices.

Geo. H. White, Solicitor

In the Supreme Court of the District of Columbia. Alice M. Allen, nee Chick, Complainant, v. John W. Allen, Defendant.

No. 25,181. Equity Docket, No. —.

The object of this suit is to annul the marriage contract solemnized between the complainant and defendant on the 29th day of November, 1904, upon the grounds that said marriage was procured through fraud, intimidation, and threats on the part of the defendant, and that said defendent is alleged to have had a living wife from whom he had never been divorced at the time of said marriage. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, it is, this 22d day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

Leckie, Fulton & Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of George J. Drew, Deceased.

No. 12,754. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ella M. Drew, widow of the deceased, it is ordered this 21st day of March, A. D. 1905, that notice be and hereby is given to **Charles P. Drew, Elizabeth M. Deming, Joseph Drew, Bertha Drew Smith, Mabel Drew, Ethel Drew, Mary Drew, Gilbert Drew, Ernest Drew, Addie Drew Gasch, George Drew, Leon Drew, Owen Drew, William D. Drew,** and to all others concerned, to appear in said court on **Friday, the 28th day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Charles S. Shreve, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Asbury R. Johnson, Deceased.

No. 12,761. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Richard M. Johnson, it is ordered this 22d day of March, A. D. 1905, that notice be and hereby is given to **Frank Johnson,** and to all others concerned, to appear in said court on **Wednesday, the 26th day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Joseph R. Fague, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Richard A. Arnold,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of March, 1905. RICHARD W. EMMONS, 323 Putnam ave., Brooklyn, N. Y., FREDERICK S. EMMONS, 323 Putnam ave., Brooklyn, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. 12-3t

Legal Notices.

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frederick M. Detweiler,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. 12-3t

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hennie V. Prince,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. ABRAHAM D. PRINCE, 1523 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. 12-3t

A. A. Birney and P. R. Hilliard, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Feeny,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. JOSEPH A. O'HARE, 1008 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,493. Administration. 12-3t

Hugh M. Sterling, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas M. Exley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. CLARENCE M. EXLEY, 1449 Sheridan ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,749. Adm. 12-3t

SECOND INSERTION.

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Lewis C. Main,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1905. MOLLIE M. MAIN, 417 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,285. Adm. 11-3t

Digitized by Google

Legal Notices.

Bates Warren and W. L. Browning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Harriet S. Lusk**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SAMUEL ROSS, 11th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,487. Administration. 11-3t

Raleigh Sherman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Isaac Hollingsworth**, late of the State of Virginia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of September, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. RALEIGH SHERMAN, 514 11th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,889. Administration. 11-3t

Jos. D. Sullivan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William H. Veerhoff**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of March, 1905. O. L. VEERHOFF, 1217 F st.; GEO. K. BAIER, 917 Eye st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,678. Administration. 11-3t

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes Suman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. A. F. FOX, 14th st. and N. Y. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,766. Administration. 11-3t

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Walter L. Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. ALLAN R. CAMPBELL, 42 Broadway, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,781. Administration. 11-3t

Legal Notices.

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Reuben Taylor, Deceased.

No. 12,751. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Julia Taylor, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to **Sarah Quinlan and William Taylor**, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Edward L. Hillyer, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Anna Johnson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by Edward L. Hillyer, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,012. Administration. 11-3t

Oscar Luckett, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Owen Donnelly**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. GEORGE R. REPETTI, by Oscar Luckett, Attorney. Test: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,019. Administration. 11-3t

Jesse E. Potbury and Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William T. Mathews**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **8th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SIMON WOLF, cor. 14th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,721. Administration. 11-3t

Digitized by Google

Legal Notices.

Lyon & Lyon and Irving Williamson, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Sallie C. Meyer, Guardian, v. Sallie C. Meyer et al.
No. 3228. Guardian Docket.

The object of this suit is to sell the north half of sublot 27, square 435, Washington, D. C., of which Henry Wolford died seized, and to reinvest proceeds under the provisions of section 156 of the Code of said District. On motion of the complainant, it is this 15th day of March, A. D. 1905, ordered that the defendant, **Roland Wolford,** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: James Tanner, Clerk. 11-3t

S. T. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Kinney, Deceased.
No. 12,755. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellen Isabel Kinney, it is ordered, this 14th day of March, A. D. 1905, that notice be and hereby is given to **Thomas Kinney, Catherine Kinney, Rose Kinney, and Mary Kinney,** of Brunswick, New Jersey, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration d. b. n. c. t. a. on the estate of **Catharine V. Whelan,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. WILLIAM T. FINN, Administrator, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,953. Adm. 11-3t

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.
William B. Peter et al. v. Martha C. Gibbs et al.
No. 23,896. Equity Docket No. —.

The object of this suit is to quiet title to lot 10, in square east of square 87 in the city of Washington, in the District of Columbia, and vest the same in the plaintiffs. On motion of the plaintiffs, it is, this 14th day of March, A. D. 1905, ordered that the defendants, **Jane Bell, Kate Offutt, John Peter, Evelyn McEnery, Minnie E. Thomas, Nellie Thomas, Virginia L. Thomas, Elizabeth Thomas, William E. Thomas, T. Charles Thomas, and James P. Thomas,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, jr. 11-3t

Legal Notices.

Carlisle & Johnson, Solicitors

In the Supreme Court of the District of Columbia.
Alexander Campbell v. Eliza McConnell et al.
No. 24,863. In Equity.

Upon consideration of the report of **J. M. Carlisle,** trustee herein, filed March 13th, A. D. 1905, it is, by the court, this 13th day of March, A. D. 1905, **ordered that the** sales of lot lettered "N" in William B. Todd's subdivision of a part of original lot numbered 1 and the whole of lots numbered 2 and 3. in square 688, as described in said report, improved by premises known as No. 436 1st st. southwest, to Patrick Smyth for the sum of nine hundred and fifty dollars ($950.00), and part of original lot numbered 23 in square numbered 1018, described more fully by metes and bounds in said report, improved by premises known as No. 411 13th st. southeast, to Alexander Campbell for the sum of eight hundred and fifty dollars ($850.00), as made and reported by said trustee, be finally ratified and confirmed unless cause to the contrary be shown on or before the 13th day of April, A. D. 1905. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of adminstration on the estate of **R. Catharine Cain,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of February, 1905. BERNARD J. CAIN, 1601 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,734. Administration. 11-3t

W. C. Prentiss, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Eileen A. Bailey,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of March, 1905. FANNIE B. COLONNA, Administratrix, by W. C. Prentiss, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,753. Administration. 11-3t

Henry V. Tulloch, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, Ohio, and Illinois, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth Delano Ames,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **14th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of March, 1905. JOHN GRIFFITH AMES, 1600 13th st. N. W., Wash. D. C.; BEN AMES, Mt. Vernon, Ohio; JOHN GRIFFITH AMES, JR., Jacksonville, Illinois. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,562. Adm. 11-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

Alex. R. Mullowny, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Frank W. Godden, Deceased.

No. 12,741. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Rudolph Kauffman, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to **John Godden**, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

---

W. Mosby Williams, Solicitor

In the Supreme Court of the District of Columbia.

Lavinia Keen, Petitioner, v. Clemonts H. Howard Keen, alias, etc., et al., Respondents. Equity, No. 25,170.

The object of this suit is to obtain by petitioner a divorce from the respondent, Clemonts H. Howard Keen, on the ground of adultery. On motion of petitioner, it is this 15th day of March, 1905, ordered that said respondent, **Clemonts H. Howard Keen, alias Clemens Howard Keen**, and the corespondents, **Mary A. Brown, alias Mamie A. Keen, and Lizzie Payne, alias Lizzie Keen**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

---

William J. Miller, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James E. Miller**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. ELIZABETH J. MILLER, Executrix, by WILLIAM J. MILLER, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,866. Adm. 11-3t

---

Ralston & Siddons, Solicitors

In the Supeme Court of the District of Columbia.

Martin R. Ward v. George R. Devitt.

No. 25,184. Equity Docket 56.

ORDER OF PUBLICATION.

The object of this suit is to secure a decree directing the sale of goods, chattels, and personal property described in the bill of complaint and the exhibits attached thereto, and from the proceeds thereof to pay a note made by the defendant and held by the complainant. On motion of the complainant, it is, this 10th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

Legal Notices.

THIRD INSERTION.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Susan E. Detrick, Deceased.

No. 12,736. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edward H. Thomas, executor, it is ordered this 7th day of March, A. D. 1905, that notice be and hereby is given to **Louis Edward Wright**, and to all others concerned, to appear in said court on **Wednesday, the 19th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-3t

---

Daniel W. O'Donoghue, Solicitor

In the Supreme Court of the District of Columbia.

Mary C. Cronin v. Abraham Young et al.

No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

mar. 10-17, apr. 7-14, may 12-19

Thos. J. Mackey, Solicitor

In the Supreme Court of the District of Columbia.

Annie M. Porter v. Ellis B. Porter.

No. 25,174. Equity Docket No. 56.

The object of this suit is to obtain a divorce on the ground of desertion and non-support, provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

Jas. F. Bundy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Henry W. White**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. BENJAMIN F. MORRISON, Bureau of Education. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,728. Administration. 10-3t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Florida, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Augusta Maria Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of March, 1905. FRANK T. RAWLINGS, 1505 Pa. ave. N. W., Wash., D. C.; WM. HENRY YOUNG, Athens, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,757. Administration. 10-3t

Lambert & Baker, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Margaret Burkhard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. FRANCESCA LITZ, 241 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,574. Administration. 10-3t

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

Legal Notices.

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Schu**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. CHARLES SCHU, 1367 Fla. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,591. Administration. 10-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Dadmun**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of March, 1905. ELIZABETH WILSON, 606 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,710. Administration. 10-3t

F. R. Keys, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Special Term in Equity.
Martha D. Schlosser v. Robert F. Schlosser.
Equity, No. 22,914.

On motion of the plaintiff, by F. R. Keys, her solicitor, it is ordered that the defendant, Robert F. Schlosser, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 10-3t

George P. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William O. Beckenbaugh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of November, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November. 1904. MARGARET A. BECKENBAUGH, 2319 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,516. Administration. 10-3t

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Flannery**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1905. MICHAEL A. LYNCH, 219 G st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,559. Administration. 10-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 13

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MARCH 31, 1905

CONTENTS.

Editorial 193
In Memoriam—Franklin H. Mackey 194
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Samuel Gassenheimer, plaintiff in error, v. District of Columbia 197
Josiah Millard, appellant, v. Ellis H. Roberts, Treasurer, etc., et al 198
John W. Hayes et al., appellants, v. Simon Burns et al 200
Legal Notices 202

Tribute of the Bar to Judge Charles C. Cole.

The bench and bar of this District united, on Friday afternoon, March 24, 1905, in paying tribute to the memory of Judge Charles C. Cole, whose recent death was so greatly deplored by his brethren at the bar and the community in general. Chief Justice Clabaugh, of the Supreme Court of the District, presided, and Mr. Wharton E. Lester acted as secretary. In taking the chair Judge Clabaugh spoke briefly of the character of Judge Cole. Messrs. Wm. F. Mattingly, Nathaniel Wilson, A. S. Worthington, J. J. Darlington, George E. Hamilton, and R. Golden Donaldson were appointed a committee on resolutions and presented a report eulogizing Judge Cole as a lawyer, judge, and Christian gentleman, and expressing the sorrow of the bar at his death. Eloquent and appropriate addresses were made by Mr. Mattingly, Mr. Hamilton, Mr. Walter C. Clephane, and Mr. R. Golden Donaldson. Mr. Donaldson, who entered Judge Cole's office when a boy and who was his law partner at the time of his death, spoke at the special request of the members of the committee. A full report of the proceedings will appear in our columns at an early day.

Charges of Professional Misconduct.

In a recent communication addressed to the members of the bar of this District by the Board of Directors and Grievance Committee of the District Bar Association, reference is made to the fact that alleged unprofessional conduct of certain individuals, members of the bar, has given rise to criticism of members of the profession generally. Attention is called to the provisions of section 6 of Common Law Rule 2 of the Supreme Court of the District of Columbia, requiring the United States attorney to investigate charges of professional misconduct preferred in writing against any member of the bar, and if probable cause be found to present to the court in general term charges and specification against such member; and to Article VI of the by-laws of the Bar Association, on "Grievances." The communication makes an earnest request that any and all acts of unprofessional conduct within the knowledge of any member of the bar shall be called to the attention of the Committee on Grievances, that action may be had thereon. The committee is composed of Messrs. Henry P. Blair, Wm. H. Dennis, J. Spaulding Flannery, Andrew Y. Bradley, and R. Golden Donaldson.

In another column will be found a report of the proceedings at the meeting of the bar of this District held to pay tribute to the late Franklin H. Mackey, one of its honored members. The addresses delivered on the occasion pay fitting tribute to the character of Mr. Mackey as a man and lawyer, as well as to the service performed by him for the profession in this District in the preservation of the decisions of the court in general term; and those whose privilege it was to enjoy an intimate acquaintance with him will recognize the justice of the tribute paid him. It is a sad coincidence that one of the speakers on the occasion was Judge Charles C. Cole, whose death so quickly followed that of Mr. Mackey.

Before a judge is translated to the Supreme Court he shares in the fallibility which is inherent in all courts except those of last resort. Broome v. Davis, 87 Ga. 584, 13 S. E. Rep. 749, per Beckley, C. J., reversing a judgment by Lumpkin, J.

Where the statute exempts one bed for every two persons, and the family consists of the debtor, his wife, and three boys, only two beds are exempt, as the three boys may occupy one bed. Glidden v. Smith, 15 Mass. 170.

Digitized by Google

IN MEMORIAM—FRANKLIN H. MACKEY.

Proceedings of the Meeting of the Bar of the District of Columbia, Held on February 10, 1905, to Take Appropriate Action on His Death.

In calling the meeting to order and announcing its object, Mr. Edward H. Thomas, first vice-president of the Bar Association, said:

"GENTLEMEN OF THE BAR: We have lost one of the old guard—among the few survivors with us of that distant, historic civil conflict.

"Franklin H. Mackey was a veteran alike of the sword and the law. The honor he gained as a soldier he kept undimmed as a lawyer.

"A quarter century's work at this bar is a test of mentality and character. Mr. Mackey met that test. He gained and kept our respect and affection, and we mourn him. He did unselfish, tiresome work for us, and left those who remember the need of collated local precedents twenty-five years ago in his debt by the publication of his reports and his work on Practice. These contributions to the legal literature of a by-gone day will keep his memory alive for years to come.

"The soldier, poet, author, lawyer, lovable associate, is gone. Death has closed the last chapter of his life. He will never again answer the roll call in camp or court.

"We meet to give expression to our sorrow for the loss sustained by the bar and to speak in loving recollection of the man."

Mr. Justice Barnard, of the Supreme Court of the District of Columbia, having been called to the chair as permanent chairman, and Mr. Charles W. Clagett as secretary, Mr. Edward A. Newman moved that the chair select a committee of nine members to draft resolutions expressive of the sentiments of the bar toward the deceased; and, the motion being adopted, the following gentlemen were named as such committee, viz: Mr. Augustus S. Worthington, Mr. Walter D. Davidge, Mr. William W. Boarman, Mr. Michael J. Colbert, Mr. Hayden Johnson, Mr. William A. Gordon, Mr. Arthur A. Birney, Mr. Edward A. Newman, and Mr. Francis H. Stephens.

The committee retired and afterward made its report, as follows:

Mr. A. S. WORTHINGTON:

Mr. Chairman, I am requested by the Committee on Resolutions to move the adoption of the following preambles and resolutions:

"Whereas the bar of the District of Columbia has learned with profound sorrow of the death of Franklin H. Mackey, an honored member of our profession; and

"Whereas we have met for the purpose of paying just tribute to the memory of our late brother, whom it hath pleased Divine Providence to take from us at a period of his life when his usefulness as a lawyer and a citizen had attained marked significance and merit; therefore, be it

"Resolved, That in the death of Franklin H. Mackey the bar of the District of Columbia has sustained the loss of one of its most erudite and distinguished members, the community an enterprising and respected citizen, and the family of the deceased a devoted and affectionate husband.

"Resolved, That to Franklin H. Mackey the bar and the people of this District generally are specially indebted for the assiduous and indefatigable labor which he exerted in compiling the decisions of our courts and publishing the same in reports which bear his name; which decisions were in a state of bewildering chaos at the time he undertook the task.

"Resolved, That we tender to the bereaved family of our deceased brother our sincere sympathy in their great sorrow.

"Resolved, That these resolutions be suitably engrossed and delivered to the widow, and that the president of the Bar Association be requested to move the court in general term to inscribe a copy of the same on its minutes."

Remarks of Mr. Augustus S. Worthington.

Mr. Chairman, in moving the adoption of these resolutions I can not refrain from saying a few words of the character of Mr. Mackey, with whom I was associated for so many years in this District in the practice of our profession.

As indicated by the resolutions, the particular thing with which Mr. Mackey is linked in our minds is the reports which bear his name. I doubt whether anybody, except those of us who have been here for more than twenty-five years—and it has been about that length of time since I made Mr. Mackey's acquaintance—can appreciate the service that was thus rendered the bar of this District. For a period of eighty years or more this jurisdiction (though its courts have wider jurisdiction than any other in the United States, deciding as they do questions of importance not only to the people of this District but of importance to people all over the country) was practically without any reports of its judicial decisions. We know, as a matter of fact, that the five volumes of notes which carry the name of Cranch, and which cover the period from 1801 to 1825 or thereabouts, were not in print and accessible to the bar, or any one else, until 1852; and when Mr. Mackey came here there were no reports of our judicial decisions except those notes, which are no reports at all, and the three volumes under the name of Mr. Justice MacArthur.

"Mr. Chairman, Mr. Mackey came to this District in 1877. He had been here but a few years when he discovered how necessary it was that the decisions of the Supreme Court of the District in General Term should be put in some useful form. He undertook to do it. As he states in the preface to his Reports, it was with him a labor of love. He did not expect any pecuniary return from his labor. And when we remember how few reports are sold in this jurisdiction, we may not doubt the absolute verity of that statement. By the performance of this task—begun and completed for no other reason than that he might pay a debt which he believed he owed to the profession—and by his efforts as editor of THE LAW REPORTER, in which capacity he promptly published every decision of importance, Mr. Mackey rendered the bar and the people of this District a most signal service.

Franklin H. Mackey was not a man to whom the ordinary observer would assign the characteristics which he possessed and which did him honor. Outwardly his life was illustrated by

Digitized by Google

his reports and by the practice of his profession; but he was a man given to charitable deeds, quietly and unostentatiously performed. I am told that, notwithstanding the fact that Mr. Mackey was not the possessor of large means, yet he undertook and carried out the education of two boys at his own expense.

Mr. Mackey and I were born in the same year. When the war between the North and the South came he was a resident of South Carolina, and his sympathies were with the Confederate cause. Though he was at that time a boy but 18 years old, he entered the service of the Confederacy and served throughout the war. I am told that he was in thirty battles during that strife (where you and I, Mr. Chairman, were on the other side), and that more than one battlefield of that war was stained with his blood. And whatever may have been his virtues, for whatever cause his friends may remember him with affection or with pride, surely as we are constituted there is nothing for which we admire him more than that in vindication of a cause he believed to be just he followed those who had the success of that cause at heart, even to the cannon's mouth.

Remarks of Mr. J. McDowell Carrington.

Mr. Chairman, my experience as a participant on occasions of this solemn character is very limited, and it is with no little embarrassment, therefore, that I now rise.

My acquaintance with Mr. Mackey during the last four, five, or six years of his life was very intimate, as intimate, perhaps, as was the acquaintance of any other member of the bar, with the possible exception of one or two. I had the opportunity of knowing him not only as a lawyer, but as a man—a gentleman.

Those who have preceded me, Mr. Chairman, have spoken of the fact that they were in the opposing army to that in which Mr. Mackey fought in the great contest that made this nation tremble between the years 1861 and 1865. It so happened that in the providence of God Mr. Mackey and I were together. I have frequently heard his sentiments with regard to that contest, and I know the high, patriotic feelings he had toward that section of the country in whose interests he made himself so conspicuous in battle. I know how loyal he was, as were his great ancestors who were instrumental in forming the Constitution of this nation; yet, while he was later devoted to our country of today, as were those ancestors of his in the formation of our Government, he never once yielded the belief that he was doing right in the part he took in the great conflict, and he never for one moment thought that the conduct of his comrades should be forgot. On the contrary, he always expressed himself, publicly as well as privately, as believing that under the emotions which actuated those people and behind the training which they had, was the conviction that they were American patriots, contemplating the entire country—that within the hearts of those people who struggled, as he did, who risked life, as he did, was the faith that they struggled and risked their lives to maintain the true principles of the American Constitution.

But that question should not be discussed here. I was led into it by my friends who spoke so kindly and delicately about it. Indeed, Mr. Chairman, their delicacy touched me.

But my friends have not spoken of all the beautiful virtues which adorned Mr. Mackey's character. I never saw a more tender man or a more domestic one. I never saw (if I may delicately allude to it) a sweeter association than existed between him and his bereaved wife. I never saw brothers more devoted than were his brothers to him. I never saw young men receive more lavish charity than did those young men to whom Mr. Worthington alluded.

As has been said, not only was Mr. Mackey a lawyer, he was something beside. Versed in the classics, schooled in Latin, acquainted with Greek, and skilled in the use of two modern languages, he was a scholar as well. And he was not unknown as a poet. He published a volume of his verses. In that volume are many beautiful gems, and they point out his true character—a magnanimous man.

Mr. Mackey was a modest man. He was a lovable man. Those who knew him best loved him most. He was at all times diffident—a little too reserved, perhaps; but those who were fortunate enough to know him well, knew him to love him.

Mr. Chairman, after the most intimate acquaintance with Mr. Mackey I may say of him, without the slightest hesitation, that which I could not say if he were alive. It might then be considered a compliment—that which a modest man like he was might shrink from. I can say that Mr. Mackey was one of the most generous men I ever saw. If generosity can be a fault, it was one with him. He made a good deal of money in his profession, but he was careless with it. It was at the command of the needy. Even where the object was one that should not be encouraged, so generous and impulsive were his motives, that into his pocket his hand would go, and his last dollar would be contributed toward that object.

"And e'en his failings lean'd to virtue's side."

Remarks of Mr. Charles C. Cole.

Mr. Chairman, I desire to add a few words to what has already been said in appreciation of the life and character of our deceased brother.

Undoubtedly, as has been so well said by Mr. Worthington, the profession in the District of Columbia owes Mr. Mackey a debt of gratitude, not only because of his valuable services in publishing the reports of decisions in this jurisdiction, and in editing THE LAW REPORTER, in which work he contributed for many years far more than his share and far more than it has been the lot of most of us to contribute to the general advantage of the profession, and this he did without any adequate compensation therefor. His only incentive in these labors was his devotion to the profession and his desire for its advancement.

Mr. Mackey was also a man of kind, generous, and charitable impulses. You, Mr. Chairman, and all of us can bear testimony to the fact that in many cases he has devoted his time and services to clients from whom he could expect but small, if any, compensation. Neither the size of the fee nor the measure of compensation to which he was entitled ever stood in the way of

Digitized by Google

his taking charge of a case if it commended itself to his judgment, and the circumstances of the client would not admit of a cash retainer.

Mr. Mackey came to this District about the time that I did, and from the very first I came to know him quite intimately, and our intimacy continued to the time of his death. I was associated with him in many cases and in many different ways. And, Mr. Chairman, I learned to respect him, not only as a man and lawyer, but I learned to love him for the many beautiful traits of character which he possessed.

Mr. Mackey's early experiences and my own were not dissimilar. He came up from the South—I went down from the North. We met as boys, each fighting for what he believed to be right, on the many bloody battlefields of Virginia, Maryland, and Pennsylvania. In many conversations that I had with him, after we became acquainted here, we compared experiences in the same friendly spirit as I have frequently done with comrades in those battles. He had no bitterness of feeling growing out of that conflict, and as a loyal American rejoiced in a reunited country.

As we contemplate his unselfish life and services we can have no other feeling than one of admiration for his character as a man, a lawyer, and a soldier.

Remarks of Mr. M. D. Rosenberg.

Mr. Chairman, I would feel that I had been neglectful in an important duty did I not at this time attest the things which have been said at this meeting with respect to the splendid character of Mr. Franklin H. Mackey.

My worthy brethren who have preceded me in their remarks have informed us concerning his qualities as a soldier, poet, and lawyer. I had not the pleasure of a personal acquaintance with Mr. Mackey in the earlier years of his career, and therefore knew him not as a soldier, except in the latter years of his presence among us, when he was battling in the peaceful realms of life for the supremacy of what was right and what was just. I knew him not as a poet, except in the more recent years, when he exhibited those poetic instincts which embellished his personality as a thoroughly aristocratic gentleman. But I did know Mr. Mackey as a lawyer. It was as a lawyer that I, not very long since, made his acquaintance. His superior knowledge of a particular branch of the law involved in a case in which I was attorney induced me to seek his counsel. I called on him at his office, where he had spent so many years of usefulness to himself and to the community at large, and it was there that his many lovable qualities were brought to my particular attention; and among the many qualities possessed by Mr. Mackey, the one of loyalty appeared at all times prominent—loyalty not alone to himself, but to his friends, his clients, and his associates in practice. In my limited association with him at the bar the observation was forcibly impressed upon me that he was most diligent in the preparation of his cases, not only with regard to the law, but with regard to the facts as well, for he was moved by a sincerity which never waned and which prompted a personal examination of each witness, as well as the closest attention to other important details in the preparation of a case. He believed that the interests of his client demanded that he himself should know that every step necessary for the proper conduct of a case had received his timely attention, so that when his cases were called for trial he found himself well equipped, and there asserted his clients' interests in a manner so capable and conscientious as to win the admiration of the bench as well as of the bar.

Mr. Chairman, I deem it a marked distinction to add my praises, and should be glad to say much more concerning the impressions created by my associations with him, but the important events in his career, as well as the many sterling qualities possessed by him, have been so carefully reviewed by my brethren here that I will simply conclude with the observation that within Mr. Mackey's large and manly frame there beat a heart equally as large, actuated by the loftiest of motives and pulsating with the most generous of impulses, and that those who knew him well will agree that those years which finally crowned him with their snows also brought the laurels of veneration and the blessings of a pure renown.

Remarks of Mr. H. E. Davis.

Mr. Chairman, I suppose that every one here at times feels, as I know that I have done, that there is a certain perfunctoriness about occasions like this, and I suppose that every one, like myself, never gets under the spell of one of them that he is not ashamed to have felt that. Pessimistic we get, the best of us, at times, and we ought to be thankful that occasions like this do come around to make us blush at our pessimism.

It is a long time, twenty-five years, to many who are in this room, and those who, like myself, have spent that length of time in the practice of our profession here, have seen the warriors of our calling go, one after another, not to hear the trumpet again in this life, and we can not escape the force of the lesson that comes to us as we reflect upon the fact.

I am a young old man, twenty-five years at this bar, and during all that time the men who have been my seniors have been slipping away from me, one after another, and I am standing here looking upon those who have come after me, whom I remember as mere striplings, it seems. When they come to take our places in our ranks, I realize a strange sense in respect of the changed attitude, or rather the changed view with which I look upon my calling.

It is a sad thing to say; it is a sadder thing to know, but there is not the knightliness at the bar that there once was—I mean it is not so general; it is not so readily to be observed. The spirit of the times, which we are apt to characterize as commercialism, has made its mark upon us, and it is a delightful thing to meet in tribute to a man from whom the knightly spirit of our calling never passed.

No one who ever saw Franklin H. Mackey walk up and down the streets would ever credit him with the possession of the qualities that those who knew him nearly were sure he possessed. Brave as he was as a soldier, faithful and valiant as he was as a lawyer, true and high-toned as he was as a man, he had never

Digitized by Google

"worn his heart upon his sleeve for daws to peck at." The man that he was was within him, and it fell to the lot of comparatively few of his brothers to know what that inner Franklin H. Mackey was. But I have pleasure in paying my weak tribute to the character of the man whom I knew as Mackey; the man of true instinct; the man of warm heart; the man of high ideal; the man of fidelity to duty; the man of charity to his fellow man; and whatever may have been the limitations of his talents, for talents he undoubtedly had, he has gone to his grave, entitled to have it said of him that the best he had, he gave freely; the best he had, he gave under a noble impulse; the best he had, he gave without stint; the best he had, he gave with good purpose. It ought to be a long time before we forget him.

Remarks of Mr. Justice Barnard.

Gentlemen of the Bar, a number of those who have spoken, and a number of those whom I see present in this meeting, remember Mr. Mackey when he first came to the bar of this District. So that his whole career as a lawyer in this jurisdiction is within the circle of their memories. I myself have been thinking back to the time when I first saw him.

When Mr. Mackey came to the bar of this District I was here in active practice. I was opposed to him in a number of cases. I remember his first case and how I was impressed with the energy and industry he displayed in the conduct of that cause. He has frequently appeared before me since I have been on the bench, and in all the time I have known him there has been no flagging of that energy or that industry. And it seems to me, gentlemen, that the distinguishing features of his character as a lawyer were energy and industry. Then, too, he was ever earnest in the presentation of his case, whether to court or jury. Before the former he was ready with authority to fortify his position; before the latter he was equally ready with facts.

And, gentlemen, I may remark that Mr. Mackey was a man who carried no bitterness in his heart. I have talked with him many times of the strife between the States in the early '60's, and there appeared to be a total absence of any bitterness of feeling because of the result of that strife, though, of course, he never relinquished the conviction that he did right when he entered the Confederate service. His work there was as conscientiously performed as it was in the conduct of his causes at the bar.

I simply desire to add these few words to the remarks that have been made to bear testimony to the character of our departed brother, because I was here when he came, and am familiar with his whole career at this bar.

The resolutions having been unanimously adopted, the meeting adjourned.

Attest: C. W. CLAGETT,
Secretary.

As to attorneys, it can hardly be supposed that there will ever be a time when their scarcity will greatly endanger the public safety. Lockwood's case, 9 Ct. Cl. 346, per Nott, J.

Court of Appeals of the District of Columbia.

SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR,
v.
DISTRICT OF COLUMBIA.

POLICE REGULATIONS; OBSTRUCTING STREETS.

Proof merely that an automobile owned by the proprietor of a hotel, and kept for the accommodation of his guests, was allowed to stand in front of the hotel for two hours, is not sufficient to support a conviction under an information charging him with unnecessarily obstructing the street.

No. 1489. Decided March 8, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the plaintiff in error.

Mr. A. B. Duvall, Mr. E. H. Thomas, and *Mr. F. H. Stephens* for the defendant in error.

Mr. Justice DUELL delivered the opinion of the Court:

The plaintiff in error was found guilty by the Police Court of the District of Columbia on an information against him, charging him with unnecessarily obstructing the free passageway of a certain street in the District, and hindering and delaying traffic thereon, by allowing an automobile to remain on the street in front of the Hotel Lawrence for a period of two hours.

Exceptions having been taken to the rulings of the court on matters of law, and this writ of error having been granted, we are called upon to review the judgment.

The information in the case was filed under section 14 of article 10 of Police Regulations, which, in part, reads as follows:

"No vehicle shall unnecessarily obstruct the free passageway of any street or avenue, nor hinder nor delay the passage of any other vehicle," etc.

The testimony adduced on the part of the District was that of an inspector who testified that he saw Mr. Gassenheimer's automobile standing in front of his hotel for two hours on September 22 without engagement; that he hired it from Mr. Gassenheimer, moved away in it, used it for an hour, and paid for it. The automobile was a licensed public vehicle.

The plaintiff in error was called as a witness on his own behalf. He testified that he had the automobile in front of his place for the guests of the hotel; that he kept an automobile stable, having an office therefor in his hotel, and having a telephone in the stable and in his hotel for automobile business; that he orders automobiles from the stable for guests of the hotel; that the persons in charge of the automobiles are not permitted to hire them to anybody, but that the hiring has to be done through the clerk in the office; that the automobiles do not obstruct the street or affect anybody's free passage of the street, and that the street is used as a hack stand at night; that he rents his automobiles to anybody that comes to the office, and that anybody can drop into the hotel and hire an automobile from the clerk who is there for the purpose of renting them.

There is no evidence that he knowingly per-

Digitized by Google

mits any automobile standing in front of his hotel to be rented to persons other than its guests. In our opinion the testimony adduced was not sufficient to sustain the information, and no conviction should have been had.

The courts have repeatedly recognized the rights of the owners of land abutting on a public highway to encroach upon the primary right of the public to a limited extent and for a temporary purpose. Tucker v. N. Y., O. & W. R. Co., 157 N. Y. 312.

Whether a particular use of a street is a reasonable use or otherwise is a question of fact depending on all of the circumstances of the case. Flynn v. Taylor, 127 N. Y. 596.

In the latter case it was held that, in order to justify the encroachment by one in possession of land abutting upon the street, such encroachment must be reasonably necessary for the transaction of his business and it must not unreasonably interfere with the rights of the public.

This case, upon the testimony, falls within the decision of this court in the case of the Willard Hotel Co. v. the District of Columbia, 23 App. D. C. 272: 32 Washington Law Reporter, page 163, unless it is to be differentiated by reason of the fact that the party hiring the automobile was presumably not a guest of the hotel. The testimony, however, shows that the automobile was kept for the use of the guests of the hotel. That testimony is not contradicted save by implication. It can hardly be claimed that a hotel proprietor, or the carriage clerk, is presumed to know every guest of the hotel. Admitting that a hotel proprietor can not lawfully rent a vehicle kept standing in front of his hotel except to his guests, it would be very unjust to convict him of the offense of unnecessarily obstructing the free passageway of the street, and delaying traffic thereon, because such automobile chanced to be rented to some one coming into the hotel and engaging it who proved not to be a guest. We are of the opinion that proof that an automobile stood in front of a hotel for two hours is not sufficient to sustain a conviction that the free passageway of a street has been unnecessarily obstructed and traffic thereon hindered and delayed.

There is absolutely no affirmative testimony whatever to show that traffic was delayed or hindered, to the slightest degree, by reason thereof. The information was not based upon the allegation that a public cab stand was maintained in an unauthorized place, and there is no proof that the plaintiff in error rents his automobiles, standing in front of his hotel for hire, to any and all persons who may desire to use them. The information can not be sustained upon any inference. It requires sufficient legal proof in order that such a charge be sustained. We do not now pass upon the right of a stableman to keep his vehicles standing in the street in front of his office ready for hire.

For the reason that the record fails to show any violation of the police regulation upon which the information was based, the decision of the Police Court was erroneous and its judgment must be reversed, with costs, and cause remanded with direction to discharge the defendant. It is so ordered.

Reversed.

Court of Appeals of the District of Columbia.

JOSIAH MILLARD, APPELLANT,

v.

ELLIS H. ROBERTS, TREASURER, ETC., ET AL.

CONSTITUTIONAL LAW; REVENUE LEGISLATION; APPROPRIATION OF PUBLIC MONEY FOR PRIVATE USE.

The act of Congress of February 28, 1903 (32 Stat. 909), to provide a union railroad station in the District of Columbia, and for other purposes, construed in connection with the act of Congress of February 12, 1901 (31 Stat. 774), providing for the elimination of grade crossings in this District, and carrying an appropriation of $1,500,000 to be paid to each of two railroad companies as the share of the District in carrying these acts into effect, held not unconstitutional and void as being an appropriation of public money for private use nor by reason of the fact that the bills originated in the Senate and not in the House of Representatives.

No. 1481. Decided March 21, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,131, dismissing a bill to prevent payment of money appropriated by acts of Congress. Affirmed.

Mr. Josiah Millard and *Mr. W. Preston Williamson* for the appellant.

Mr. Morgan H. Beach, Mr. Geo. E. Hamilton, Mr. M. J. Colbert, Mr. F. D. McKenney, and *Mr. J. S. Flannery* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

The appellant, as complainant, filed his bill in equity in the Supreme Court of the District of Columbia to enjoin the payment by the Treasurer of the United States of any money of the District of Columbia to any person whatsoever in pursuance of the act of Congress of February 28, 1903, 32 Stat. 909, entitled "An act to provide for a union railroad station in the District of Columbia, and for other purposes," construed in connection with the act of Congress of February 12, 1901, 31 Stat. 774, providing for the elimination of grade crossings of railroads in this District, and to prohibit the carrying into effect of the provisions of these acts of Congress, and to have the acts themselves declared null and void, as without constitutional warrant. The purpose of the bill is to prevent the payment by the Treasurer out of the funds of the District of Columbia of the sum of $1,500,000 to the Baltimore and Ohio Railroad Company, and of an equal sum to the Philadelphia, Baltimore, and Washington Railroad Company, as the share of the District in carrying these acts into effect.

A demurrer was interposed to the bill, and the demurrer was sustained and the bill dismissed. From the decree of dismissal the complainant has appealed.

As we understand it, there are two questions raised by the appellant in this case: (1) That the appropriation of the money of the District of Columbia toward the payment of the expense provided by the acts of Congress in question is that of public money for a private use, and is therefore unconstitutional and void; and (2) that the acts are void because they are revenue measures and originated in the Senate instead of the House of Representatives, in which latter body the Constitution of the

Digitized by Google

United States requires that all bills for raising revenue shall originate. We will first consider the second question.

1. It is conceded that the acts in question originated in the Senate. It is so alleged in the bill, and conceded by the demurrer, and the statement is not controverted. But the plain answer to this contention is that the acts in question are not bills for the raising of revenue, but at the utmost bills for the expenditure of revenue or appropriation bills, where the appropriation is incidental to some other purpose. It may be that the general appropriation bills, so called, as well as bills for the raising of revenue, should originate in the House of Representatives; and we believe the fact to be that they always do so originate. But a bill plainly for another purpose, and which only incidentally carries an appropriation with it in order to give it effect, although such an appropriation may in fact be a necessity for the efficiency of the bill, is not constitutionally barred from originating in the Senate. If it were, possibly one-half or three-fourths of the legislation of Congress would be null and void. Every bill granting a pension, every bill providing for any additional employee in any of the executive departments, every bill providing for an additional circuit or district judge of the United States, every bill providing for an additional vessel for the Navy or an additional regiment for the Army, and hundreds of other bills of various kinds, would be outside of the range of consideration by the Senate until they had been acted on by the House of Representatives, and the body sometimes known as the upper house of Congress would be reduced almost to a condition of "innocuous desuetude," which is certainly very far from the real condition as it exists today. This has not been the practice of Congress; and this is not the reasonable understanding of the clause in the Constitution which remits to the House of Representatives alone the authority to originate bills for the raising of revenue. The principles invoked by the appellant are correct, but they are inapplicable; and no authority is cited to show that such legislative enactments as those now under consideration have been held invalid, for the reason that they contravened the organic law in the matter of their origination. See Story on the Constitution, sec. 880; Twin City Bank v. Nebeker, 167 U. S. 196.

2. The appellant's second contention is more plausible; namely, that the appropriation of money in the acts of Congress mentioned is an appropriation of public money for private use, which it is not lawful for the legislature to make. Here also the principle is sound for which the appellant contends. It is contrary to right and justice and to the fundamental principles of our Government to take the property raised by taxation for public purposes and to devote it to private uses, even under the pretense that these private uses subserve the general interest of the public. The authorities, if authorities are needed, are believed to be uniform in support of this proposition, although there are, no doubt, great divergencies of opinion as to what constitute private as distinguished from public uses. But the defect in the appellant's position is that there is not here any appropriation of public funds for private uses.

The Baltimore and Ohio Railroad Company had a valid contract with the District of Columbia, sanctioned by Congress, whereby it was authorized to procure the site of its present station and to establish and maintain that station there until the year 1910. It is now proposed to take that station away from it and to compel it to incur vast expense for the construction of a new station upon another site. This it is perfectly competent for Congress to do, but not without payment for the property taken and without some compensation for the change required to be made. And the case is not substantially different with the Philadelphia, Baltimore and Washington Railroad Company. On the face of the acts of Congress the appropriation purports to be in compensation for the rights and privileges which the railroad companies agree to surrender, and for the magnitude of the work, otherwise perhaps needless, which they agree to perform. The case is practically that of a contract between the United States and the District of Columbia on the one side, and the railroad companies on the other, whereby the railroad companies agree to surrender certain rights, rights of property as well as other rights, and to construct a work of great magnitude, greater perhaps than their own needs require, but which Congress deems to be demanded for the best interest of the national capital and by the public at large; and for this surrender of right and this work of magnitude commensurate with the public demand, Congress agrees to pay a certain sum, partly out of the funds of the United States and partly out of the funds of the District of Columbia. It is a simple case of bargain and sale, like any other purchase. Some persons there may be who may think the amount of the purchase money too great; but that is a consideration for Congress, not for the courts.

Much of the argument on behalf of the appellant is devoted to the subject of taxation, and the matter of direct and indirect taxation; but, in the view which we take of this case, the argument is wholly irrelevant. We do not think that any question of taxation is involved here. Of course, the money appropriated is, or is to be, the result of taxation, but of general, and not of any special taxation. No special tax is sought to be laid to meet the appropriation. The question in the case is simply as to the use of the money after it has been raised; and we see no good reason to question the authority of Congress to make the appropriation.

Recognizing, as we do, the patriotic purpose of the appellant to defend and protect the rights of the citizen against unlawful misappropriation of the public funds, raised from him and others by taxation, yet we find here no case of excess or abuse of its power by the legislative authority. We should be slow in any event to question the constitutionality of Congressional legislation; and the case should not be a doubtful one where the courts will assume to declare such legislation invalid.

We are of opinion that the decree appealed from was right, and that it should be affirmed, with costs. And it is so ordered.

Affirmed.

Digitized by Google

Court of Appeals of the District of Columbia.

JOHN W. HAYES ET AL., APPELLANTS, v. SIMON BURNS ET AL.

EQUITY; CORPORATIONS; RIGHT TO CORPORATE OFFICES; QUO WARRANTO.

1. The proper remedy to determine the question of title to office in a private corporation is by quo warranto, and not by a suit in equity.
2. Where it appears that the title to offices in a domestic corporation is the sole or main question at issue in a suit in equity, that the defendants are in possession under a claim of election, and that the only standing of complainants is by virtue of a claimed election, equity is without jurisdiction to try the question, and the bill should be dismissed, leaving complainants to determine the question by quo warranto.

No. 1470. Decided March 22, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,054, in suit to determine the respective rights of parties claiming to be the duly elected officers of the Knights of Labor, for an injunction, etc. Reversed.

Mr. Henry E. Davis and *Mr. E. B. Kimball* for the appellants.

Mr. Charles C. Cole, *Mr. R. Golden Donaldson*, and *Mr. John Ridout* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This is a suit in equity begun by Simon Burns and five associates, claiming to be the general officers of the Knights of Labor, a corporation organized under an act of Congress relating to the incorporation of trade unions in the District of Columbia, which corporation was joined as a party complainant. John W. Hayes and five associates, also claiming to be the general officers of the same corporation, and in possession of its property, were made defendants.

The bill alleges that the individual complainants are the legally elected and duly qualified and installed officers of the Knights of Labor, and entitled to the possession of its property, and that the defendants are not such officers, but are in possession of its property, which they are converting to their own use and wasting; that the defendants threaten to remove the property out of the jurisdiction of the court or to destroy it; that the corporation known as the Order of the Knights of Labor consists of a general assembly and of many subordinate organizations or assemblies situated in various sections of the country; that it derives the revenue necessary to carry on its work and its functions as a beneficial labor organization from a per capita tax paid to its general officers by the various subordinate lodges and assemblies, and that the defendants are collecting these taxes and converting them to their own uses; that they have fraudulently conspired to get possession of the books, records, and other property of the organization; and that they are insolvent. The bill also recites at length the history of the meeting of the corporation at Niagara Falls, N. Y., in November, 1902, at which both sets of men claim to have been elected its general officers. The relief prayed is that the court decree that the complainants are the lawful officers and members of the general executive board of the order of the Knights of Labor, and that the defendants are not such officers and members of the executive board. Incident to this relief the court is asked to enjoin the defendants from selling or otherwise interfering with the property of the corporation; from collecting the taxes from the subordinate assemblies; from interfering with the complainants in assuming control of the property, or from discharging their duties as such officers. A discovery and account is also claimed of the moneys collected by the defendants; and an order that the defendants turn over to the complainants all of the property of the corporation, much of which is specifically enumerated.

The answer is voluminous but in effect it denies that the complainants are the general officers of the corporation and alleges that the defendants are such officers; it denies that the order of the Knights of Labor is a party complainant; admits that the defendants are in possession of the property of the order, and that they are collecting the taxes due from the subordinate assemblies; denies that they are insolvent; denies that they intend to remove the property from the District of Columbia, or to destroy it. In short, the answer denies all the material averments by virtue of which the complainants ask the interposition of a court of equity. It then proceeds to give a history of the Knights of Labor; its organization and its many subordinate elements; the duties of its various officers, and gives the defendants' version of the Niagara Falls meeting at which they claim to have been elected, and thereafter duly installed as the lawful officers of the corporation. In the fortieth paragraph of the answer the jurisdiction of the court, sitting as a court of equity, is denied and it alleges that the bill does not set forth any ground for equitable relief. In the view we take of the case a demurrer might well have been filed to the bill, thereby relieving the parties of the great expense of the trial and the court of much labor.

Upon the bill, affidavits, and other papers a temporary injunction was granted. This injunction, upon the answer and affidavits and exhibits filed on behalf of the defendants, after hearing counsel for the respective parties, was dissolved. Later on the complainants moved for and obtained a restraining order to the effect that both parties be restrained from holding, or attempting to hold, any general assembly of the Knights of Labor. Shortly thereafter an order was made that the evidence be taken in open court so far as it related to the Niagara Falls meeting at which the parties to this suit claimed to have been elected general officers of the order, and also as the alleged expulsion of the complainant Hicks.

Thereupon the court proceeded to the trial of the cause, and proofs consisting of some nine hundred printed pages were taken. The trial resulted in a decree for the complainants, the salient feature of which is that the complainants are found to be the general officers of the order and the members of the general executive board of the order of the Knights of Labor, and that the defendants are not such officers and members of the executive board. Incident to this, and properly so, if the first finding was one that the court could make, an

Digitized by Google

account and injunction were ordered and the defendants directed to turn over the property of the order to the complainants.

From this decree the defendants have taken this appeal, alleging various grounds of error which may be summarized as follows: 1st. That the court erred in holding the case to be one over which a court of equity has jurisdiction; and, 2d. Admitting that the case be one within the jurisdiction of a court of equity, the court erred, in light of the testimony, in granting a decree in favor of the complainants.

The first question requires for its decision the determination as to the nature of the proceeding. This may be easily gathered from a study of the pleadings, the proofs, the statements of counsel, and the opinion of the learned justice before whom the case was tried.

The pleadings clearly show that the main question, and the one without which no other question could have been decided, was the right of the rival parties to the offices to which each claimed to have been elected at the same meeting of the order in November, 1902, at Niagara Falls. The bill attempts to thinly conceal that this is the principal question by alleging various grounds for equitable relief, and by praying for such relief; but when the case comes on for trial the complainants' counsel frankly states that the "general object of the bill is to declare that the complainants are the general officers, the general executive board, of the order of the Knights of Labor, and that the defendants are not such, each set of officers claiming to have been elected to those respective offices at the meeting of the general assemby of the Knights of Labor which met at Niagara Falls on the 11th of November of last year, 1902." The proofs are directed to that question, and it is self-evident that without a finding upon that question the court was powerless to make any other finding. The court clearly recognized this and we find the statement made in the opinion of the court that, "the sole question at issue in the case, therefore, is whether or not the complainants are the legally constituted order and officers of the Knights of Labor (Incorporated)." It is manifest that if the complainants are not such officers they have no standing in court. Both sets of parties claim to be such general officers of the corporation and both claim to have been elected at the same convention. The defendants, claiming to be such officers, were in possession of the property of the corporation, and the complainants were compelled to show and prove that they were entitled to the offices before they could claim the possession of the property and ask that the defendants be enjoined from interference with the rights of the complainants to administer the affairs of the corporation. Approach the case from any and every standpoint it will always be found that the question which must be first determined is the single, naked question of the title to the offices. We agree with counsel and court that the question of questions is the title to the offices, and until that is decided in favor of the complainants no relief of any nature can be granted them. The defendants were in possession of their respective offices in the corporation, which was a private one, organized under and by virtue of an act of Congress, and the presumption was that they had been legally elected, and consequently they could only be legally ousted by proceedings brought in proper form. Both the common law and the Code of the District of Columbia clearly point out the legal course to be pursued in determining the title to an office in a corporation such as is the one in question. We apprehend that quo warranto is that remedy. Equity is not the remedy. The adjudicated cases are quite unanimous. They speak with no uncertain sound, and such cases as may seem to depart from the rule will be found to be based upon some exceptional fact, such, for example, as when the title to the office is a mere incident of the case and not the main or sole question, as it is in the case at bar.

Referring to only two or three of the many cases similar to the one under consideration we find the law seemingly well settled. In Bedford Springs Co. v. McNeen, 161 Pa. St. 639, which was a suit in equity where the relief sought was substantially the same as these complainants ask, we find the court affirming a judgment dismissing the bill, upon the ground that the complainant had mistaken its remedy. The court said: "While it is true that the bill in this case was brought to compel the delivery of the property of the company, yet the real controversy as set forth in the bill and answer is upon the validity of the election of the defendants as directors of the company. If they were lawfully elected, the plaintiff has no case and is not entitled to the property claimed. Their title to the office of directors is therefore the real question at issue. All the averments of the bill tend to this one subject. Another election of other persons is asserted to have been the only lawful election, and the election of the defendants is alleged to have been unlawful. Thus the title of the one set of directors or of the other forms the matter of contention, and the right to have possession of the property in question is only incident to the right to the office." See, also, Commonwealth v. Graham, 64 Pa. St. 339; Gilroy's Appeal, 100 Pa. St. 5. In the latter case the court said: "It is perfectly clear that such a question" (title to office) "can not be tried by such a proceeding" (by bill in equity.) "The statutory remedy is not only adequate but it is exclusive." There is a statutory remedy applicable to this case, which is brought in the District of Columbia, the place of incorporation and the home of the corporation, control of which is sought in this proceeding. The suit was brought after the Code went into effect. Section 1538 of the Code provides that the remedy in this class of cases is by quo warranto. It says: "A quo warranto may be issued from the Supreme Court of the District of Columbia in the name of the United States—first, against a person who usurps, intrudes into, or unlawfully holds or exercises within the District . . . an office in any domestic corporation."

In New England Life Insurance Co. v. Phillips, 141 Mass. 535, which was an equitable proceeding, the court, in referring to a subject the same as now under consideration, said: "Appreciating the difficulty of maintaining a bill in equity for the purpose of directly determining a contested election, the plaintiff contends, in the first place, that the court being possessed

Digitized by Google

of the cause for the purpose of correcting and restraining a violation of a trust, may proceed to enjoin the directors who hold under and in consequence of such violation of trust. The learning of counsel has not furnished us with any instance of such an application of the equitable doctrine invoked in aid of the jurisdiction, and, after some research, we have been unable to find any. This course is open to the objection that suits to remove or to institute corporation officers do not belong to the original jurisdiction of chancery, and the right to be such officers can not, in general and in the absence of special legislation affording this remedy, be tested by means of an injunction."

The cases cited by complainants' counsel do not seem in point. Walker v. Johnson, 17 App. D. C. 144: 28 Washington Law Reporter, 768, was an appeal from a decree granting a preliminary injunction restraining, pendente lite, the holding of a corporation election. It is not an authority in any view that a bill in equity is the proper proceeding to try the question of title to an office. Goulding v. Standish, 182 Mass. 401, is not an authority that title to an office in an incorporated domestic corporation can be tried in equity. In that case the plaintiffs and defendants and their associates were members of a voluntary association. The plaintiffs, and their associates, remained members of the association, while the defendants, and their associates, had refused to comply with the laws of the association and had withdrawn from it and organized a new association. The relief sought was to restrain the defendants from removing or interfering with the property of the old association and for its delivery to the plaintiffs. No question of the title to any office was involved. It was a contest between two independent associations. Watson v. Jones, 13 Wall. 669, does not sustain the plaintiffs' contention. The main question there decided was not that of title to office. Such question at best was an incident in the litigation. The main questions presented were as to the jurisdiction of the circuit court, and to the character and extent of the jurisdiction vested in those voluntary associations sometimes called ecclesiastical courts, and how far they are independent of the civil courts. The controversy was over church property, and the defendants were enjoined from using or controlling the church edifice and property, and from hindering or preventing any one from worshiping in the church or participating in any of its religious exercises according to the usages of the church. It was a peculiar case and the court recognized it as such, and we are unable to find in it any authority for holding that the title to an office in a domestic corporation, where that is the main or sole question to be decided, can be determined by a suit in equity rather than by the common law and statutory remedy of quo warranto.

As we have said, the decisions of the courts are quite in unison in holding the proper remedy to determine the question of title to office to be quo warranto.

It appearing that the title to office in a regularly incorporated domestic corporation is the sole or main question at issue herein, as shown by the pleadings, the admission of counsel appearing in the record, and by the opinion of the trial court; that the defendants were in possession under a claim of election, and that the only standing the complainants had was by virtue of a claimed election, we are of the opinion that the court was without jurisdiction to try the question in this action, and that it should have dismissed the bill and left complainants to determine the question by quo warranto, as provided by the Code of the District of Columbia, and as warranted by common law. Thus holding it would be improper for us to express any opinion upon the second alleged ground of error.

From these views it follows that the decree of the court below must be and it is reversed, with costs; and the cause will be remanded to the Supreme Court of the District with direction to dismiss the bill of complaint. And it is so ordered. Reversed.

A Treatise on the Law of Notes, Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

Law of Notes.

1064 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

Legal Notices.

FIRST INSERTION.

Daniel W. O'Donoghue, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick I. Moran**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. MARY MORAN KELEHER, 3009 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,808. Administration. 13-3t

Irwin B. Linton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas J. Parker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. THOMAS D. PARKER, 313 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,267. Administration. 13-3t

Gittings & Chamberlin, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Harriet Ann Butler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. WALLACE McK. STOWELL, Lincoln Nat'l Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,689. Administration. 13-3t

Digitized by Google

Legal Notices

C. W. Darr, Solicitor

In the Supreme Court of the District of Columbia.

Dudley T. Hassan v. The Union Investment Company of the District of Columbia et al.
Equity No. 24,692.

Upon consideration of the reports of Charles E. Roach and Charles W. Darr, receivers, filed herein, stating that they have sold the properties described in said reports and in these proceedings, as follows: The south one-half of lot numbered eleven (11) in square numbered ten hundred and eighteen (1018), to Adam A. Weschler for the sum of five hundred and thirty-four dollars and fifty cents ($534.50), and lots numbered seventy-three (73), seventy-four (74), and seventy-five (75), in A. M. McLachlen and Robinson White, trustees, etc., and T. H. G. Todd's subdivision of original lots in square numbered ten hundred and twenty-eight (1028), as recorded in the office of the surveyor of the District of Columbia in liber No. 17, folio 44, to Raymond J. Cooley for the sum of eighteen hundred dollars ($1,800.00), it is, by the court, this 27th day of March, A. D. 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **10th day of April, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 13-3t

---

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Ernst Willner, Deceased.
No. 12,770. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth Willner, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to **unknown heirs at law and next of kin,** and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

---

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph Stump,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. CHARLES H. BAUMAN, 328 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. 13-3t

---

Turner & Mitchell, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Otto Broderson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. AMELIA BRODERSON, 639 Sheridan st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,455. Administration. 13-3t

Legal Notices.

P. A. Bowen, Jr., Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary A. L. Carpenter,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. ARTHUR DUDLEY CARPENTER, The Highlands, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,794. Administration. 13-3t

---

Fred L. Rosemond, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Alice V. C. Williams, Deceased.
No. 12,817. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles M. Campbell, it is ordered, this 29th day of March, A. D. 1905, that notice be and hereby is given to **E. J. Williams and Helen Williams,** and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

---

Carlisle & Johnson, Attorneys

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In Re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin. No. 10,117. Adm. Docket.

On consideration of the petition of **Georgia Anne** O'Neill, executrix, it is, by the court, this 29th day of March, A. D. 1905, ordered that the sale of lot twenty in Webb and Bradley, trustees', subdivision of square five hundred and twenty-eight, as per plat recorded in liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Kate Harbaugh, at and for the sum of thirty-five hundred dollars ($3,500) cash, subject to the payment to Moore and Hill of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed unless cause to the contrary be shown on or before the **first day of May, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-named day. WENDELL P. STAFFORD, Justice. A true copy. Test: JAMES TANNER, Register of Wills. 13-3t

---

Fulton Lewis, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of **Alberta Stewart,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of March, 1905. ALBERT STEWART, Administrator c. t. a., by Fulton Lewis, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,385. Adm. 13-3t

Digitized by Google

Legal Notices.

John J. Hamilton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary A. McGolrick, Deceased.
No. 12,797. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton and Michael J. Colbert, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to **the unknown next of kin and the unknown heirs of Mary A. McGolrick**, and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

---

Robert S. Hume, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Laura Edith Barron**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. GEO. S. FINCH, 317 Queen st., Alex., Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,788. Administration. 13-3t

---

Charles J. Murphy, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Annie Partridge, Deceased. No. 12,767.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Charles J. Murphy, it is ordered this 23d day of March, A. D. 1905, that notice be and hereby is given to **Frederick Griffith and Belle Griffith, known in religion as Sister Marie of the Sacred Heart**, and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

---

Eugene A. Jones, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of Estate of Patrick Curtin, Deceased.
Administration. No. 12,759.
ORDER OF PUBLICATION.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of the said deceased, and for letters testamentary on said estate, to Honorah Curtin, it is ordered this 23d day of March, 1905, that notice be and hereby is given to **John N. Curtin and James O'Hagan**, and to all others concerned, to appear in said court on the **1st day of May, 1905, at ten (10) o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three (3) successive weeks before the return date herein mentioned, the first publication to be not less than thirty (30) days before said return date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

Legal Notices.

Stanton C. Peelle, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Altschuh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **27th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. LOUIS P. ALTSCHU, 2007 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,798. Administration. 13-3t

---

SECOND INSERTION.

Edw. E. Holman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William W. Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. EDWARD B. HOLMAN, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,682. Administration. 12-3t

---

Edward S. Bailey and Tucker & Kenyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Hayes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **16th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH H. CURRAN, 315 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,161. Administration. 12-3t

---

Andrew Y. Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Baldwin S. Moore**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. ORRA G. MOORE, 1732 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,779. Administration. 12-3t

---

Jos. T. Ferry, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Ferry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH T. FERRY, 1200 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,781. Administration. 12-3t

Digitized by Google

Legal Notices.

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frederick M. Detweiler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. 12-3t

Charles S. Shreve, Jr., Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Asbury R. Johnson, Deceased.
No. 12,761. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Richard M. Johnson, it is ordered this 22d day of March, A. D. 1905, that notice be and hereby is given to **Frank Johnson**, and to all others concerned, to appear in said court on **Wednesday, the 26th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Geo. H. White, Solicitor
In the Supreme Court of the District of Columbia.
Alice M. Allen, nee Chick, Complainant, v. John W. Allen, Defendant.
No. 25,181. Equity Docket, No. —.

The object of this suit is to annul the marriage contract solemnized between the complainant and defendant on the 29th day of November, 1904, upon the grounds that said marriage was procured through fraud, intimidation, and threats on the part of the defendant, and that said defendent is alleged to have had a living wife from whom he had never been divorced at the time of said marriage. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, it is, this 22d day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

Leckie, Fulton & Cox, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George J. Drew, Deceased.
No. 12,754. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ella M. Drew, widow of the deceased, it is ordered this 21st day of March, A. D. 1905, that notice be and hereby is given to **Charles P. Drew, Elizabeth M. Deming, Joseph Drew, Bertha Drew Smith, Mabel Drew, Ethel Drew, Mary Drew, Gilbert Drew, Ernest Drew, Addie Drew Gasch, George Drew, Leon Drew, Owen Drew, William D. Drew**, and to all others concerned, to appear in said court on **Friday, the 28th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Legal Notices.

Joseph R. Fague, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Richard A. Arnold**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **21st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of March, 1905. RICHARD W. EMMONS, 328 Putnam ave., Brooklyn N. Y., FREDERICK S. EMMONS, 328 Putnam ave., Brooklyn, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,773. Administration. 12-3t

Julius I. Peyser, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hennie V. Prince**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. ABRAHAM D. PRINCE, 1523 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. 12-3t

Wolf & Rosenberg, Attorneys
In the Supreme Court of the District of Columbia.
Holding a Probate Court.
In re Estate of John Curtis, Deceased.
No. 11,974. Admr.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 24th day of September, 1900, purporting to be the last will and testament of John Curtis, deceased, has been returned as to Thomas E. Waggaman and Patrick Curtis "not to be found," it is, this 21st day of March, A. D. 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **18th day of April, 1905**, and that this order and a copy of the said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period of time in The Washington Times. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

ISSUES.

1st. Was the said John Curtis at the time of the alleged execution of the said paper writing dated September 24, 1900, of sound and disposing mind and capable of executing a valid deed or contract?

2d. Was the execution of said paper writing dated September 24, 1900, by John Curtis procured by undue influence or misrepresentation or artifice exercised upon or practiced against said John Curtis by any person or persons? 12-4t

Barnard & Johnson, Solicitors
In the Supreme Court of the District of Columbia.
Kate F. Steele, Complainant, v. William Masi et al., Defendants.
No. 21,010. Equity Docket 48.

Guy H. Johnson and Wilton J. Lambert, trustees, having reported to the court the offer of John Mariner to purchase the original lot numbered eleven (11) in square numbered two hundred and eighty-eight (288), improved by premises No. 723 Thirteenth street northwest, in the city of Washington, District of Columbia, for the sum of thirty thousand dollars ($30,000), payable all cash, and subject to a commission of seven hundred dollars ($700.00) to Moore & Hill (inc.), it is, by the court, this 23d day of March, A. D. 1905, adjudged, ordered, and decreed that upon compliance with the terms of said offer the same be accepted and the sale of said property to said John Mariner be ratified and confirmed, unless cause to the contrary be shown on or before **April 25, 1905**. Provided a copy of this order be published once a week for three (3) successive weeks before said day in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

Digitized by Google

Legal Notices.

A. A. Birney and P. R. Hilliard, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Feeny,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. JOSEPH A. O'HARE, 1008 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,493. Administration. 12-3t

Hugh M. Sterling, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas M. Exley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. CLARENCE M. EXLEY, 1449 Sheridan ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,749. Adm. 12-3t

THIRD INSERTION.

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Lewis C. Main,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1905. MOLLIE M. MAIN, 417 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,235. Adm. 11-3t

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes Suman,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. A. F. FOX, 14th st. and N. Y. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,766. Administration. 11-3t

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Walter L. Campbell,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. ALLAN R. CAMPBELL, 42 Broadway, New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,731. Administration. 11-3t

Legal Notices.

Jos. D. Sullivan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William H. Veerhoff,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of March, 1905. O. L. VEERHOFF, 1217 F st.; GEO. K. BAIER, 917 Eye st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,678. Administration. 11-3t

Bates Warren and W. L. Browning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Harriet S. Lusk,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SAMUEL ROSS, 11th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,487. Administration. 11-3t

Raleigh Sherman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Isaac Hollingsworth,** late of the State of Virginia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of September, A. D. 1905;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. RALEIGH SHERMAN, 514 11th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,889. Administration. 11-3t

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **R. Catharine Cain,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of February, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of February, 1905. BERNARD J. CAIN, 1601 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,734. Administration. 11-3t

Jesse E. Potbury and Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William T. Mathews,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **8th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. SIMON WOLF, cor. 14th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,721. Administration. 11-3t

Digitized by Google

Legal Notices.

S. T. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Kinney, Deceased.
No. 12,755. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellen Isabel Kinney, it is ordered, this 14th day of March, A. D. 1905, that notice be and hereby is given to **Thomas Kinney, Catherine Kinney, Rose Kinney, and Mary Kinney**, of Brunswick, New Jersey, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

W. C. Prentiss, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Eileen A. Bailey**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of March, 1905. FANNIE B. COLONNA, Administratrix, by W. C. Prentiss. Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,758. Administration. 11-3t

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration d. b. n. c. t. a. on the estate of **Catharine V. Whelan**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. WILLIAM T. FINN, Administrator, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,958. Adm. 11-3t

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.
William B. Peter et al. v. Martha C. Gibbs et al.
No. 23,896. Equity Docket No. —.

The object of this suit is to quiet title to lot 10, in square east of square 87 in the city of Washington, in the District of Columbia, and vest the same in the plaintiffs. On motion of the plaintiffs, it is, this 14th day of March, A. D. 1905, ordered that the defendants, **Jane Bell, Kate Offutt, John Peter, Evelyn McEnery, Minnie E. Thomas, Nellie Thomas, Virginia L. Thomas, Elizabeth Thomas, William E. Thomas, T. Charles Thomas, and James P. Thomas**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, jr. 11-3t

Legal Notices.

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Reuben Taylor, Deceased.
No. 12,751. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Julia Taylor, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to **Sarah Quinlan and William Taylor**, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Lyon & Lyon and Irving Williamson, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Sallie C. Meyer, Guardian, v. Sallie C. Meyer et al.
No. 8228. Guardian Docket.

The object of this suit is to sell the north half of sublot 27, square 435, Washington, D. C., of which Henry Wolfort died seized, and to reinvest proceeds under the provisions of section 156 of the Code of said District. On motion of the complainant, it is this 15th day of March, A. D. 1905, ordered that the defendant, **Roland Wolfort**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: James Tanner, Clerk. 11-3t

Oscar Luckett, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Owen Donnelly**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. GEORGE R. REPETTI, by Oscar Luckett, Attorney. Test: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,019. Administration. 11-3t

Edward L. Hillyer, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Anna Johnson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of March, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by Edward L. Hillyer, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,012. Administration. 11-3t

Digitized by Google

Legal Notices.

Alex. R. Mullowny, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Frank W. Godden, Deceased.

No. 12,741. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Rudolph Kauffman, it is ordered this 14th day of March, A. D. 1905, that notice be and hereby is given to **John Godden**, and to all others concerned, to appear in said court on **Friday, the 21st day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

---

W. Mosby Williams, Solicitor

In the Supreme Court of the District of Columbia.

Lavinia Keen, Petitioner, v. Clemonts H. Howard Keen, alias, etc., et al., Respondents. Equity, No. 25,170.

The object of this suit is to obtain by petitioner a divorce from the respondent, Clemonts H. Howard Keen, on the ground of adultery. On motion of petitioner, it is this 15th day of March, 1905, ordered that said respondent, **Clemonts H. Howard Keen, alias Clemens Howard Keen**, and the corespondents, **Mary A. Brown, alias Mamie A. Keen, and Lizzie Payne, alias Lizzie Keen**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

---

Carlisle & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Alexander Campbell v. Eliza McConnell et al.

No. 24,863. In Equity.

Upon consideration of the report of J. M. Carlisle, trustee herein, filed March 13th, A. D. 1905, it is, by the court, this 13th day of March, A. D. 1905, ordered that the sales of lot lettered "N" in William B. Todd's subdivision of a part of original lot numbered 1 and the whole of lots numbered 2 and 3, in square 638, as described in said report, improved by premises known as No. 436 1st st. southwest, to Patrick Smyth for the sum of nine hundred and fifty dollars ($950.00), and part of original lot numbered 23 in square numbered 1018, described more fully by metes and bounds in said report, improved by premises known as No. 411 13th st. southeast, to Alexander Campbell for the sum of eight hundred and fifty dollars ($850.00), as made and reported by said trustee, be finally ratified and confirmed unless cause to the contrary be shown on or before **the 13th day of April, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

---

Henry V. Tulloch, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, Ohio, and Illinois, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth Delano Ames**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of March, 1905. JOHN GRIFFITH AMES, 1600 13th st. N. W., Wash. D. C.; BEN AMES, Mt. Vernon, Ohio; JOHN GRIFFITH AMES, JR., Jacksonville, Illinois. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,562. Adm. 11-3t

---

Legal Notices.

William J. Miller, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James E. Miller**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of March, 1905. ELIZABETH J. MILLER, Executrix, by WILLIAM J. MILLER, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,866. Adm. 11-3t

---

Ralston & Siddons, Solicitors

In the Supeme Court of the District of Columbia.

Martin R. Ward v. George R. Devitt.

No. 25,184. Equity Docket 56.

ORDER OF PUBLICATION.

The object of this suit is to secure a decree directing the sale of goods, chattels, and personal property described in the bill of complaint and the exhibits attached thereto, and from the proceeds thereof to pay a note made by the defendant and held by the complainant. On motion of the complainant, it is, this 10th day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

---

FOURTH INSERTION.

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 14

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - APRIL 7, 1905

CONTENTS.

Editorial 209
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
James C. Leonard et al., appellants, v. Abner-Drury Brewing Co. et al. 211
Ada V. Byrne, appellant, v. Robert M. Morrison. 215
George C. Hazelton, appellant, v. Francis Miller. 217
Legal Notices 218

THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Action for Death by Wrongful Act; Contributory Negligence of Decedent.

In Georgetown and Tenallytown Railway Co. v. Smith, the appeal was from a judgment of the trial court in an action for negligently causing the death of plaintiff's intestate. It appeared from the evidence that at the point of the accident the space between two large cars alongside each other was less than three inches, and when the cars were in motion they were liable to come into contact with each other. The decedent was a passenger on one of the cars, and was sitting with his arm resting on the hand rail of the car and projecting over it. In some way he was caught between the cars and pulled from the one in which he was riding, and received injuries which caused his death. A motion by the defendant to direct a verdict on the ground that plaintiff was guilty of contributory negligence was denied by the trial court, and the jury returned a verdict for $9,000 in favor of the plaintiff, upon which there was judgment. The Court of Appeals affirms the judgment in an opinion by Mr. Justice Duell, holding that the questions of negligence were properly submitted to the jury. Several interesting questions in the law of contributory negligence are raised by the assignments of error, and decided adversely to the contention of the appellant.

Specific Performance; Adequate Remedy at Law.

In Hazelton v. Miller the appeal was from a decree dismissing a bill for specific performance. The bill alleged the making of a contract whereby defendant agreed to sell certain real estate to complainant for $9,000, and that thereafter complainant entered into a binding contract to sell the property to the United States for $14,395.50. It also alleged the refusal of the defendant to perform his contract. The Court of Appeals affirmed the decree of dismissal, holding that there was a want of jurisdiction in equity, the complainant having an adequate remedy at law in an action to recover the difference between the price at which the defendant agreed to sell and that at which the United States had agreed to purchase the property from the complainant. The opinion is by Mr. Chief Justice Shepard.

Bill of Review; Trusts; Perpetuities.

In Landrum et al. v. Jordan the appeal was from a decree of the court upon a bill of review. It appeared that a testator, by one item of his will, devised certain real estate in this District to trustees, the trust to continue until 1928. By a separate item he directed that the rents from one of the pieces of property be paid over to a niece during her life, and directed that should they be less than $40 per month the trustees should add thereto sufficient to make that sum. In a proceeding to construe the will its provisions, so far as they affected lands in this District, were decreed void as creating a perpetuity, and it was declared that as to them the testator died intestate. Upon a bill of review filed by the niece, it was held that this decree was erroneous in as far as the provision for her benefit was concerned, the trust for her benefit being declared separate and independent of the other provisions and not affected by their invalidity; and that the provision in her favor created a valid incumbrance or rent charge primarily against the said premises, and, secondarily, against the entire estate of the testator for any balance the rents of the premises might not yield. Mr. Chief Justice Shepard delivered the opinion of the court, which affirms the decree of the court below.

Husband and Wife; Alimony; Counsel Fees.

In Sparks v. Sparks, the opinion of the court is by Mr. Justice Duell. Two separate appeals were taken—one from an order of the court below, in a suit by a wife against her husband for maintenance, directing the payment of

Digitized by Google

alimony pendente lite, and the other from an order directing the appellant to provide the funds necessary to enable the wife to defend the appeal from the first order. Both orders are affirmed by the Court of Appeals, in a very readable opinion.

Contracts; Statute of Limitations.

In Boogher v. Roach et al., the action was in assumpsit to recover upon an implied contract for services rendered as "genealogist, examiner, and conveyancer" in connection with the estate of Abraham Young. The trial court held that any claim the plaintiff might have was barred by the statute of limitations, and directed a verdict for the defendants, upon which there was judgment. Its action is affirmed in an opinion by Mr. Justice Morris.

Telegraph Company; Messenger Service; Loss of Money.

In White v. Postal Telegraph Cable Company, the plaintiff sought to recover from the defendant company $75, alleged to have been lost by a messenger in its employ, to whom it was entrusted by a firm of real estate brokers, upon an order from plaintiff's attorneys. The trial court directed a verdict for defendant, and the Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment. The liability of the defendant company as a common carrier is considered in the opinion.

Electric Railways; Judgment for Personal Injuries Affirmed.

In McDermott, receiver of City and Suburban Railway, v. Severe, the action was for personal injuries received by the appellee, a boy of — years. While his foot was caught in a space between the rail and the planking at a suburban crossing, the plaintiff was run down by one of defendants' cars and his leg cut off. The verdict was in favor of the plaintiff for the sum of $15,000—one of the largest ever given in this District in an action for personal injuries. The Court of Appeals affirms the judgment in an opinion by Mr. Chief Justice Shepard.

Direction of Verdict for Plaintiff Affirmed.

In Whipple v. Geddes, the plaintiff sued to recover the balance of the purchase price of a piece of real estate. The trial court directed a judgment for the plaintiff, and its ruling is affirmed in an opinion by Mr. Justice Duell.

Accounting by Trustee; Compensation of Trustee.

In the case of Mayfield v. McCurdy, the suit was for an accounting by the trustee under a will, and to compel distribution of funds in the hands of the trustees. The appellant objected to the decree of the court below in respect of the compensation to which the trustee was held entitled, and to the provision made for its payment; and also to the refusal of the court below to direct the distribution of the funds in their hands arising from the sale of certain real estate until after the death or remarriage of the widow of the testator. The Court of Appeals, in an opinion by Mr. Justice Morris, affirms the decree of the court below.

Judgment for Claimant on Trial of Right of Property Affirmed.

In Brown v. Petersen, the appeal was from a judgment for the claimant on a trial of a right of property in chattels levied on under an execution issued upon a judgment of a justice of the peace. The claimant had a lien on the chattels for rent, and they were in his possession at the time of the levy. The court, in an opinion by Mr. Justice Morris, affirms the judgment of the trial court, in which a verdict for the claimant was returned by direction of the court.

Patent Appeals Decided.

No. 279. Corry et al. v. McDermott; decision affirmed. Opinion by Mr. Chief Justice Shepard.

No. 280. In re Application of Scott; decision affirmed. Opinion by Mr. Justice Morris.

No. 287. Funk et al. v. Whitely; decision affirmed. Opinion by Mr. Chief Justice Shepard.

No. 288. Jenner v. Dickinson, and No. 290, Thibodeau v. Same; decision affirmed. Opinion by Mr. Justice Morris.

No. 291. Thibodeau v. Hildreth, and No. 291, Same v. Same; decisions affirmed. Opinions by Mr. Justice Morris.

Where, prior to adjudication, a bankrupt is taken into custody upon an order of arrest in a civil action brought upon a contract debt, which is provable and dischargeable in bankruptcy, he is entitled, under the provisions of section 9a, to be released from imprisonment, and the court of bankruptcy is authorized to discharge him on habeas corpus. People ex rel. Taranto, v. Erlanger, 13 Am. B. R. 197.

A motion for an adjudication on the pleadings in an involuntary proceeding admits all the averments of fact properly pleaded in the answers, and a denial of the motion is in effect a holding that the answers are sufficient in law to defeat the motion, thus entitling the alleged bankrupts to a final decree dismissing the petition with costs. In re Waugh, 13 Am. B. R. 187.

Digitized by Google

Court of Appeals of the District of Columbia.

JAMES C. LEONARD ET AL., APPELLANTS,
v.
ABNER-DRURY BREWING COMPANY ET AL.

CONSPIRACY IN RESTRAINT OF TRADE; JURISDICTION OF EQUITY TO ENJOIN; ANTI-TRUST ACT.

A bill in equity for an injunction alleged the formation by four brewing companies of a combination known as the brewers' association, in order to prevent competition in the manufacture and sale of brewed and malt liquors, to control the disposition of the same to retail dealers, and to prevent competition in price; that by the agreement between them no one of said companies could sell its product at a price fixed by itself, nor below a price fixed by the association, and no one of them was allowed to sell beer to customers allotted to another; that in order to raise the price of beer to $6 per barrel said companies entered into a conspiracy to suppress the competition of the H. company, which had declined to enter the association and was selling beer to complainants and other retail dealers at $5.60 per barrel; that to compel said H. company to enter said combine, the said association had conspired with certain officers of a labor union from among whose members the H. company procured employees to carry on its operations, to cause said workmen to leave the service of the H. company unless it agreed to enter said association; that intimidated by these threats the H. company was about to yield to their demands and join said combine, and would do so unless enjoined; that complainants had for a long time been purchasing beer from the H. company at $3.60 per barrel and selling the same at retail, and had built up a profitable business; that should the H. company be compelled to enter said combine the price of beer would be increased to $6 per barrel, and another probable result would be that complainants would be assigned as customers to some other of the companies in said association and be unable to purchase beer from the H. company even at the advanced price—the immediate and direct effect of either act, and especially of both combined, being to deprive complainants of many regular customers and diminish their profits, to their irreparable loss and injury. *Held*—

1. That the allegations of the bill showed that the so-called brewers' association was a trust or combine within section 3 of the "Anti-Trust Act" (26 Stat. 209), and the coercion practiced upon the H. company to compel it to enter the trust and obey its regulations of the advance in prices and the arbitrary division of customers is a palpable invasion of private right, as well as inimical to the interests of the public.
2. That the court could not, at the suit of complainants, decree the agreement between the members of the brewers' association null and void—complainants' interest in respect of that not being different from that of the general public, whose interests can be protected only by a suit by the United States.
3. That the attempted invasion of the rights of the H. company could not be stayed at the suit of complainants unless they can show irreparable injury will be done to themselves as the direct consequence of such invasion.
4. That the allegations of the bill show a case of legal injury which would result directly to complainants from the forcible and wrongful termination of their trade relations with the H. company, to prevent which equity would enjoin the doing or continuance of the wrongful acts.
5. That the purposes and practices of the alleged combination or conspiracy are equally violative of the common law which prevails in this District, and of which section 3 of the "Anti-Trust Act" is declaratory; and independant of the statute any person may invoke the jurisdiction of equity to prevent an irreparable injury through such conspiracy.
6. Whether, if the wrongs complained of should be remediless save by a resort to the "Anti-Trust Act," any party other than the United States can invoke the jurisdiction of equity to restrain their commission, quære.

No. 1474. Decided March 7, 1905.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,803, dismissing a bill for an injunction. Reversed.

Mr. Wm. G. Johnson for the appellants.

Mr. A. A. Birney, Mr. H. F. Woodard, Mr. L. A. Bailey, Mr. Charles W. Darr, Mr. Alex. H. Bell, and *Mr. M. J. Colbert* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree sustaining a demurrer to and dismissing a bill for injunction. The bill was filed July 21, 1904, by Leonard and Stewart, retail liquor dealers in the District of Columbia, on their own behalf and on behalf of others similarly engaged who may wish to intervene. The defendants are The Abner-Drury Company, a corporation organized under the laws of West Virginia; The National Capital Brewing Company, a corporation of Virginia; The Arlington Brewing Company, a corporation of Virginia; The Washington Brewery Company, a corporation of New York; The Chr. Heurich Brewing Company, a corporation of Virginia; the managers of said corporations, respectively, and Louis S. Crown, Michael Cockery, and Timothy Healy. It is averred that all of said corporations, save the Arlington company, have their breweries and general offices in District of Columbia; that the Arlington company brews its beer in the State of Virginia but maintains an office and agency for the sale and distribution of its product in the District of Columbia. Defendants Crown and Cockery, residents of the District, are charged as members and officers of an unincorporated association known as Local No. 63, of the International Brotherhood of Stationary Firemen; and Healy, a non-resident, as president of said International Brotherhood.

It is averred that the five brewing companies are engaged in manufacturing or brewing malt liquors, and dispose of the bulk of their product, which amounts annually to about two hundred and seventy thousand barrels, in the District of Columbia; and that the retail dealers thereof are dependent upon them for the bulk of their stock in trade; that the said brewing companies, excepting the Heurich company, have confederated and conspired together in a brewers' association, or under a name of similar import, in order to prevent competition in the manufacture and sale of brewed or malt liquors, to control the disposition of the same to the retail liquor dealers, and to prevent competition in the price of the same; that by the terms of the confederation and agreement aforesaid, no one of said brewing companies shall sell its product at a price to be fixed by itself, nor below an arbitrary price to be fixed by the associators; and, further, the business of selling beer is to be allotted among them, and no one is to sell to the customers allotted to another; that for more than a year a certain grade of "light" beer has been sold to retail dealers at $4 per barrel with a discount of 10 per cent for cash, making $3.60 per barrel; that prior to said time the price for said beer had been $6 with a discount of 5 per cent for cash, making $5.70 per barrel; that the reduction had been caused by the Heurich company, which had never entered into any agreement with other brewers, and has until this

Digitized by Google

date refused to do so, and that by reason of the reduction in price by the Heurich company the other companies were compelled to reduce the price of their beer to the same figure in order to meet the competition of the Heurich company; that in order to raise the price of beer to that of $6 per barrel the four companies aforesaid entered into a conspiracy to suppress the competition of the Heurich company, and to effectuate the same conspired together to compel the Heurich company to join the association aforesaid, and to abide by and observe the prices fixed thereby, as well as the distribution or allotment to be made among consumers and customers; that the Heurich company in the manufacture of beer is compelled to employ firemen who are members of said Local No. 63 of the International Brotherhood of Stationary Firemen; that in order to aid in the accomplishment of the purposes of the conspiracy, the said four companies agreed with Crown and Healy to induce the firemen employed by the Heurich company to break their contract of employment, unless the latter would agree to enter said association, submit to its regulations raising the price of beer and allotting a division of customers; that in pursuit of the objects of the said conspiracy, the said defendants composing the Brewers' Association procured the said defendant Crown to address a communi cation to the Heurich company notifying it that its contract with its firemen would be terminated on July 1, and that the firemen would not be permitted to work for it unless it joined the said association and submitted to its rules and exactions; that further, to effect the object aforesaid, said defendants composing said association caused the defendant Healy, in his character as president of the brotherhood aforesaid, to seek a conference with the defendant Heurich company, ostensibly to adjust a contract between said defendant and its firemen for the ensuing year, but in reality to compel said defendant to agree to enter said association and submit to its rules and regulations. Further allegations of the bill are quoted as follows:

"That at the said conference said Healy in the presence of the defendant Edward F. Abner, representing the Abner-Drury Brewing Company and acting for it in that behalf, and of Albert Carry representing the defendant The National Capital Brewing Company and acting for it in that behalf, and of the defendant Bernard Katz representing the Arlington Brewing Company and acting for it in that behalf, informed the representative of the defendant The Chr. Heurich Brewing Company that unless the said last named defendant should agree to confer with the representatives of the other four brewing companies representing the Brewers' Association aforesaid and join said association and submit to its rules and exactions, particularly its requirement that the said Chr. Heurich Brewing Company should raise the price of its light beer to its customers to $6 per barrel, and sell only to such customers as the said association might allot to it, he, the said Healy, in his character as president of the International Brotherhood of Stationary Firemen, would not confer with said Chr. Heurich Brewing Company in respect to a contract between it and the said Local No. 63 of the International Brotherhood of Stationary Firemen, nor permit its members to enter into the employment of said Chr. Heurich Brewing Company to serve the said defendant in the prosecution of its business. The said Healy then and there in the presence of the defendant Edward F. Abner, representing the Abner-Drury Brewing Company and acting for it in that behalf, and of Albert Carry representing the defendant The National Capital Brewing Company and acting for it in that behalf, and of the defendant Bernard Katz representing the Arlington Brewing Company and acting for it in that behalf, further informed the representative of the defendant, The Chr. Heurich Brewing Company that the said meeting was called for the purpose of compelling the defendant The Chr. Heurich Brewing Company to join said association composed of the other four defendant brewing corporations, and to raise the price of light beer to the retail liquor dealers to $6 per barrel, and to sell its beer only to such of the retail liquor dealers in the District as the association might authorize it to sell the same; and that in the event of the said defendant The Chr. Heurich Brewing Company refusing to submit to its demand, other workmen in the employ of said defendant The Chr. Brewing Company would be required to quit work, and that the product of said brewery would, through the influence of said Healy, be boycotted, meaning and intending thereby that he, the said Healy, had the power and means and would use the same to interfere with and prevent the sale of the product of said Chr. Heurich Brewing Company to these complainants and other retail liquor dealers and to general consumers of beer within the District, unless the said defendant complied with the said demands.

"11. The complainants further show that they are and have for some years past been engaged in the purchase and sale of the product of the defendant The Chr. Heurich Brewing Company, and have a large demand for the same in their business; that if the said defendant The Chr. Heurich Brewing Company shall yield to the demands of the other defendants and increase the price of the beer to $6 per barrel the said increase of price will involve great loss and irreparable injury to these complainants and other retail liquor dealers similarly situated, and that if the demands of said Healy and the said four defendant corporations composing said Brewers' Association are complied with by the defendant The Chr. Heurich Brewing Company, these complainants and other retail liquor dealers will be prevented from purchasing and selling the product of the defendant The Chr. Heurich Brewing Company to their irreparable loss and injury, and the deprivation of their customers, who are accustomed to purchase the said product from these complainants and others selling the same.

"12. Your complainants are further informed and believe and therefore charge, that no disagreement or controversy has arisen between the defendant The Chr. Heurich Brewing Company and any of its employees; that no change in the services, hours of labor, or wages of the

Digitized by Google

firemen employed by it is sought or desired by said firemen, and that the purpose of the defendant Healy and the defendant Crown, in advising and commanding the said firemen to cease their employment with the said defendant The Chr. Heurich Brewing Company, as hereinafter set forth, is to embarrass said last named defendant in its business, and compel it to abandon its competition in trade and its sale of its product at the price now charged by it to all consumers, and to compel it to increase the price to the sum of $6 per barrel, and to limit the sale thereof to certain specified purchasers instead of extending the same to these complainants and all other retail liquor dealers.

"13. Your complainants are further advised and therefore charge that the purpose and object of the conspiracy entered into among the said defendants The Abner-Drury Brewing Company, The National Capital Brewing Company, The Arlington Brewing Company, The Washington Brewery Company, and the said Crown and Healy, by causing a strike or refusal to work among the employes of the defendant The Chr. Heurich Brewing Company, is to stifle competition in the brewing business and to restrain the conduct of trade in violation of the rights of these complainants and of other retail liquor dealers and of the general public, and in violation of the law of the land. And they are further advised and believe, and therefore charge, that the said design and purpose of the said defendants is contrary to public policy and good morals, and such as a court of equity can and ought to restrain by injunction against said defendants.

"14. Your complainants are informed and believe, and therefore charge that the said defendant Healy, in furtherance of the conspiracy entered into by him and the defendant Crown and the four defendant brewing corporations composing the Brewers' Association aforesaid, has actually ordered the firemen employed by the defendant The Chr. Heurich Brewing Company to quit the service of said defendant and to refuse further to perform their contract of employment with it at 12 o'clock noon on the 21st day of July, 1904, unless said defendant The Chr. Heurich Brewing Company shall submit to the demands of said conspirators and enter into said Brewers' Association and abide by and be governed by its rules and exactions and agree to raise the price of light beer to $6 per barrel, and to sell the same only to such persons as the said association shall prescribe.

"15. Your complainants are further informed and believe that the said defendant The Chr. Heurich Brewing Company is considering the said threats and demands of the said defendants, and may by reason of the threatened injury to its business yield to the demands of said defendant and enter said association, and as a consequence thereof increase the price of its beer to $6 per barrel and submit to the restrictions of the said association as to the persons to whom the same may be sold.

"16. Your complainants are advised and believe and therefore charge that the said agreement and confederation between the said defendant corporations composing the Brewers' Association is an unlawful agreement in restraint of trade, designed to prevent competition in business and to restrict the persons to whom the products of breweries may be sold, and that the said defendants can not lawfully maintain said association or enforce its rules, and that it will be unlawful for the defendant The Chr. Heurich Brewing Company to enter into said agreement and confederation or to abide by and observe its rules and restrictions.

The prayers of the bill are: 1. That the association agreement be declared null and void. 2. That defendants, their agents, etc., be perpetually enjoined from attempting to coerce the Heurich company into joining said association or entering into the terms of said agreement. 3. That the defendants, composing the association, their agents, etc., be perpetually enjoined from inviting, soliciting or demanding that the Heurich company shall increase the price of its product to complainants, to any other retail dealers, or to any persons whomsoever, or directly or indirectly counseling or advising such action. 4. That the defendants composing the brewing association, their agents, etc., and the defendants Crown and Healy be perpetually enjoined from commanding, counseling, advising, or by any means inducing the firemen or other employees of the Heurich company to quit the service of the same, or from in any manner attempting to regulate the price at which said company shall sell any of its product, or the person or persons to whom it may sell the same. 5. That the Heurich company be perpetually enjoined from entering into the confederation known as the Brewers' Association, or from entering into any combination or agreement with the defendant companies, or any of them, for the purpose of regulating the price at which the product of any of said corporations shall be sold, or the persons to whom the product of any of said companies shall be sold; or from in any manner attempting to restrict or restrain the competition between the several brewing companies in the prosecution of their business of manufacturing and selling the product of their breweries. The Abner-Drury Brewing Company, and Harry Williams, the representative of the Washington Brewery Company, appeared and filed demurrers to the bill, which were sustained. It does not appear from the record that any of the other defendants entered their appearance. The Abner-Drury Brewing Company and the Arlington Brewing Company have, however, appeared by counsel in this court and been heard in support of the decree appealed from.

1. As it is charged in the bill, the combination between the several defendants composing the Brewers' Association is, without doubt, a trust or conspiracy in restraint of trade within the third section of the "anti-trust act" of Congress (26 Stat. 209), and the coercion attempted to be practiced upon the Heurich company to compel it to enter the trust and obey its regulations of the advance of prices and the arbitrary division of customers is a palpable invasion of private right, as well as inimical to the interests of the public. Montague v. Lowry, 193 U. S. 38, 47; Addyston Pipe and Steel Co. v. U. S., 175 U. S. 211, 244; U. S. v. Freight Asso., 166 U. S. 290, 322, 323. The purposes and prac-

Digitized by Google

tices of the combination or conspiracy, as alleged, are equally violative of the common law which prevails in the District of Columbia, and of which the third section of the statute is declaratory. Northern Securities Co. v. U. S., 193 U. S. 197, 339; Morris River Coal Co. v. Barclay Coal Co., 68 Pa. St. 173; Nester v. Continental Brewing Co., 161 Pa. St. 473; Croft v. McConoughey, 79 Ill. 346; Richardson v. Buhl, 77 Mich. 632; Arnot v. Pittston, etc., Coal Co., 68 N. Y. 558; Jackson v. Stanfield, 137 Ind. 592; Gatzow v. Buening, 106 Wis. 1, 14. The decisions of the highest courts of many other States are to the same effect.

2. The serious question for determination on this appeal is the right of the complainants to the equitable remedy of injunction to prevent the execution of the objects of the unlawful conspiracy. It is clear that they are not entitled to the relief asked in the first prayer of the bill, namely, that the agreement between the four members of the Brewers' Association be declared null and void. In respect of that agreement, merely, the concern of the complainants is not different from that of the general public, whose interest can be protected in no other way than by a suit in the name of the United States. Nor can the attempted invasion of the rights of the Heurich Brewing Company by the immediate parties to that agreement, no matter how flagrant, be stayed at the suit of the complainants unless they can show that an irreparable injury will be done to themselves as the direct consequence of such invasion.

Their ground of complaint does not rest upon a contract with the Heurich company which the latter is about to break, in obedience to the unlawful demands of the members of the trust and the compulsion exercised by them and their confederates. If such were the case, and that contract should be broken through the malicious interference of the defendants, the complainants might maintain an action against them for the damages occasioned thereby. Angle v. Chicago, etc., R. Co., 151 U. S. 1, 13. They could certainly maintain an action against the Heurich company for such breach, and they might possibly maintain one against all of the defendants, including that company, for threefold damages under the provisions of section 7 of the "Anti-Trust Act." Possibly, also, they might, under certain conditions, obtain an injunction against the Heurich company to prevent such breach.

Having no enforceable contract with the Heurich company, however, their right to any remedy depends entirely upon the condition that they have shown a case of legal injury which would directly result from the forcible and wrongful termination of their established trade relations with the Heurich company. Their allegations are in substance: That they have an established and profitable business in the sale of light beer of the Heurich company's manufacture; that they have been regularly purchasing such beer from the Heurich company at the price of $3.60 per barrel and retailing it for a long period of time, during which they have established a lucrative trade and custom; that the Heurich company is unwilling to advance the price of beer to the proposed trust rate, and wishes to continue its sales to complainants at the present price; that, intimidated by the threats of the defendants and their malicious and oppressive acts, the Heurich company is about to yield to their demands, and will probably do so unless restrained; that the immediate and direct effect of such surrender will be an advance in the price of said beer to $5.70 per barrel; that another and probable effect will be that complainants will be assigned as customers to some other member of the trust, against their will, and be unable to purchase the beer of the Heurich company at even the advanced price; that the immediate and direct effect of either act, and particularly of both combined, will be to deprive complainants of many of their regular customers, and diminish their receipts and profits to their irreparable loss and injury.

In the event of the execution of the conspiracy these conditions would entitle them to an action for such damages as they would be permitted to prove at law, with threefold recovery under the statute. Montague v. Lowry, 193 U. S. 38. But damages for acts which might work commercial ruin are not always recoverable at law, the rules of which, relating to the measure of damages, do not ordinarily warrant the assessment of consequential damages of an uncertain or speculative character, such as loss of trade and profits, and the failure of credit and business. For such injuries the remedy at law, even under the statute giving a threefold recovery, is inadequate and incomplete. In such cases, then, the jurisdiction of equity attaches, and to accomplish the ends of justice the writ of injunction will issue to prevent the doing or the continuance of the wrongful acts. Watson v. Sutherland, 5 Wall. 74, 79; North v. Peters, 138 U. S. 271, 281; see, also, Vance v. Vandercook, 170 U. S. 468, 480.

3. The contention of the appellees, that the exclusive right to equitable relief against the execution of conspiracies in restraint of trade is in the United States under the provisions of the "Anti-trust Act," has not been seriously contested by the appellants who claim the right independently of the statute. This, as we have seen, but declares the rule of the common law then and now in force in the District of Columbia, under which any person may invoke the jurisdiction of equity to prevent an irreparable injury through such conspiracy. Jackson v. Stanfield, 137 Ind. 592; Hagar v. Blindell, 18 U. S. App. 354, 359. That the statute makes a conspiracy in restraint of trade a crime, and provides a severe penalty therefor, does not necessarily impair the ordinary jurisdiction of equity where the criminal acts work irreparable injury to property. In re Debs, 158 U. S. 564, 593.

And whatever may be the rule of its enforcement generally, neither by express terms nor necessary implication does it undertake to completely substitute its remedies for all others which any person might have had before its enactment.

As the complainant's right to a remedy in equity can be maintained without regard to the act of Congress, it is not essential to determine whether, if the wrongs complained of would be remediless save by resort to that act, any party, other than the United States, can invoke the

Digitized by Google

jurisdiction of equity to restrain their commission. At the same time we are not to be understood as admitting the defendant's contention on this point. The decisions supporting that contention have all been in cases under the sections of the act relating to conspiracies in restraint of interstate commerce, in jurisdictions where the power of Congress is limited to that end, and where the jurisdiction of equity, it seems, was not invoked on the ground of special and irreparable injury to the complainant. Met. T. Co. v. R. R. Exp. Co., 108 Fed. Rep. 909, 912, and cases cited; G. C. & S. F. Ry. Co. v. Miami S. S. Co., 86 Fed. Rep. 407.

Moreover, conspiracies in restraint of trade in the District of Columbia are determinable under the third section of the act wherein, in the exercise of its plenary power of legislation, the Congress has enacted that: "Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce in any territory of the United States or the District of Columbia . . . is hereby declared illegal." . . . The same section then declares the making of such contracts or the engagement in any such combination or conspiracy, a misdemeanor and provides a penalty. With the suggestion of these possible distinctions the question remains an open one.

4. The defendants Crown and Healy are not charged with an independent attempt to raise or fix the wages of the employees of the Heurich Brewing Company, and the rights of persons so engaged are not involved. The charge against them is that they have combined and confederated with the defendants composing the Brewers' Association for the sole purpose of aiding in the conspiracy to compel the Heurich company to join that association in order that its regulations looking to the advance of the price of beer and the allotment of customers to the several brewing companies may be enforced.

They are, therefore, equally within the scope of the remedy sought to prevent the irreparable injury of the complainants through the execution of the objects of the conspiracy entered into by their codefendants.

For the reasons given, we are of the opinion that the learned justice presiding in the Equity Court erred in sustaining the demurrer and dismissing the bill. If the testimony shall sustain the allegations of the bill substantially in the particulars before summarized, the complainants will be entitled to a decree granting the injunction prayed for, limiting the same, however, to such acts as have relation to the particular injuries sought to be done them. The dissolution of the trust agreement between the members of the Brewers' Association and the restraint of action injurious to the general public, can only be had at the suit of the United States.

The decree must be reversed with costs to be taxed against the Washington Brewery Company and Harry Williams who entered the demurrer to the bill, and also against the Abner-Drury Brewing Company, the Arlington Brewing Company, and the National Capital Brewing Company, who have entered their appearance in this court in support of the decree appealed from. The cause will be remanded for further proceedings in conformity with this opinion. It is so ordered.

Reversed.

ADA V. BYRNE, APPELLANT,

v.

ROBERT M. MORRISON.

LANDLORD AND TENANT; NOTICE TO QUIT; ARREST OF JUDGMENT; OBJECTION NOT RAISED BELOW; EXECUTION; ENTRY OF APPEAL.

1. A notice to quit served by the landlord upon the tenant full thirty days before the end of the term, as required by section 1219, Code D. C., is not insufficient because it fails to specify the date of the termination of the lease.
2. The receipt by a landlord of rent for the current month pending a notice to quit is not a waiver of his right to demand possession under that notice.
3. A motion in arrest of judgment on the ground that the verdict of the jury in the trial of an appeal from a justice of the peace in a landlord and tenant proceeding was for "intervening rent and damages," instead of for intervening damages for the leased property and compensation for use and occupation thereof, as provided in section 1233, Code D. C., held properly denied, the recital in the verdict being an unnecessary one, and the form of the verdict not having been called to the attention of the court before the jury were discharged.
4. An objection that an action was prematurely brought, not made in the trial court but urged for the first time on appeal, will not be considered.
5. Under section 1074, Code D. C., a writ of execution may be issued immediately on the rendition of a judgment, unless suspended by agreement or by an injunction or by an appeal operating as a supersedeas, and the entry of notice of appeal will have no effect whatever.
6. Where a writ of possession issued March 28 was served the same day and on April 1 defendant gave notice of appeal, but filed no bond until April 12, on which last date a motion was made to quash the writ of possession, *held* that the motion was properly denied.

No. 1442. Decided February 8, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,657, on appeal from a judgment of a justice of the peace in a landlord and tenant proceeding. Affirmed.

Mr. J. W. Bevans, *Mr. J. S. McDonough*, *Mr. F. J. Hogan*, *Miss Florence A. Colford*, *Miss Fannie B. Clark*, *Miss Ethel M. Colford*, and *Mr. R. B. Cavanaugh* for the appellant.

Mr. John E. Laskey and *Mr. R. C. Thompson* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the court:

1. Robert M. Morrison, claiming the right of possession of premises 503 B street S. E., in the city of Washington, filed his complaint in the justice's court under section 20, Code D. C., on November 25, 1903, to recover possession of said premises of Ada V. Byrne. It was alleged that defendant had heretofore occupied the premises as complainant's tenant from month to month, and that her tenancy had been determined by the service of notice to quit of thirty days. Judgment for possession was rendered December 5, 1903. Defendant appealed therefrom to the Supreme Court of the District. On trial therein, March 14, 1904, verdict was returned in favor of complainant for possession and for "eighty dollars intervening rent and damages."

Defendant filed a motion in arrest of judg-

Digitized by Google

ment on the following grounds: First. The verdict was for rent, and not for intervening damages to the leased property and compensation for the use and occupation thereof as provided for such cases by section 1233, Code. Second. Because the verdict erroneously embraced rent beyond its date, or up to March 25, 1904. Third. Because the verdict was for rent prior to the judgment appealed from. Other grounds are substantially the same as the foregoing. This motion was overruled and judgment was entered on March 25, 1904, from which the defendant has appealed.

It appears from the bill of exceptions that complainant served defendant with the notice to quit on October 24, 1903. Complainant then offered the lease the substance of which is given. It showed that defendant occupied the premises as his tenant from month to month at $20 per month payable in advance and that the month expired on the 25th day of November. Objection was made to the proof of the notice because insufficient under the Code; overruled and exception taken. Defendant then read in evidence a receipt executed by the complainant on October 27, 1903, for $20 purporting to be for the rent of the premises for the month ending November 25, 1903. She then testified that the receipt was given for rent "up to November 26, 1903." The bill fails to recite any evidence relating to damages to the premises or the value of the intervening occupation, nor does it purport to recite all of the evidence upon which the case was tried.

2. We perceive no substantial objection to the notice to quit. It does not specify the day of the termination of the lease, a fact not required, and one presumably as well known to the defendant as to the complainant. It was dated October 23, 1903, and served the full thirty days before the end of the term as required. Code, sec. 1219.

3. It is true that the receipt of rent by a landlord, after notice to quit, of rent for a new term or part thereof amounts to a waiver of his right to demand possession under that notice. 2 Taylor, L. & T. sec. 435; Collins v. Canty, 6 Cush. 415; Croft v. Lumley, 5 Ell. & B. 648, 680; S. C. E. B. & E. 1069.

But the receipt of rent for the current month pending the notice to quit can not have that effect, and that was all that was done in this instance. The written receipt recites that it is for rent for the month ending November 25, 1903, which is the date of expiration named in the lease.

4. Section 1233 of the Code authorizes judgment where an appeal has been taken from the judgment of the justice of the peace to be entered against the appellant and the surety on his bond for "all intervening damages to the leased property and compensation for the use and occupation thereof from the date of the judgment appealed from to the date of its affirmance." This, of course, does not mean the rent stipulated in the expired contract, but the reasonable value of the use and occupation, together with damage that may have been done to the property.

The recital in the verdict that the sum of $80 was found therein for intervening rent and damages was an unnecessary one. It was not so returned in obedience to any instruction of the court so far as the record shows. It must have been found upon some evidence, but what that evidence was we are not informed by the bill of exceptions. It must be presumed, therefore, that there was proof of intervening damages and value of use and occupation to the full amount found. There is nothing to indicate that the form of the verdict was called to the attention of the court before the jury were discharged, and it is further to be presumed that if it had been it would have been amended. If the jury were directed to find for the plaintiff according to the stipulation of the lease, or the evidence was confined to that and not directed to damages and value of occupation, it was the duty of the defendant to make the proper objection and present it in his bill of exceptions.

5. According to the date given in the bill of exceptions for the expiration of the month, namely, November 25, the complaint was prematurely filed. It was one day before the time, because if the month expired on the 25th the defendant was entitled to possession for the whole of that day. It was suggested on the argument by appellee's counsel that the month expired on November 24, as actually recited in the lease, and had been misrecited in the bill of exceptions. Be that as it may, we must accept the bill of exceptions which can not now be corrected, or at any time in that way.

The point that the suit had been prematurely filed was not made in either of the trial courts. The fact was not called to the attention of either court by plea, motion, or suggestion. The motion in arrest of judgment does not mention it as one of its grounds. It is too late to raise the question for the first time on this the second appeal.

6. It appears that a writ of possession was issued on the judgment below on March 28, 1904, and executed the same day. On April 1, the defendant entered notice of appeal, but filed no bond therefor until April 12. On the last named day she moved to quash the writ of restitution because it could not lawfully issue during the time allowed for perfecting the appeal to this court. This was overruled and exception taken. There was no error. It is declared in section 1074 of the Code that: "Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter." . . . The entry of notice of appeal can have no effect whatever, though, perhaps, the court might, in its discretion and for good cause shown, suspend the execution for a reasonable time after judgment.

Finding no reversible error in the record the judgment will be affirmed with costs. It is so ordered.

Affirmed.

A justice of the peace is generally a man of consequence in his neighborhood; he writes the wills, draws the deeds, and pulls the teeth of the people; also he performs divers surgical operations on the animals of his neighbors. Bendheim Brothers v. Baldwin, 73 Ga. 594, Blandford, J.

Digitized by Google

Court of Appeals of the District of Columbia.

GEORGE C. HAZELTON, APPELLANT,

v.

FRANCIS MILLER.

EQUITY; SPECIFIC PERFORMANCE; ADEQUATE REMEDY AT LAW.

Where a bill in equity for the specific performance of a contract for the sale of land alleges that, after the making of the contract by defendant, complainant had entered into a binding contract to sell the property to the United States for a stated sum, a conveyance from the defendant being sought to enable complainant to perform that contract, the bill will be dismissed for want of jurisdiction in equity, there being an adequate remedy at law in an action to recover the difference between the price at which the defendant had agreed to sell and that contracted to be paid complainant by the United States for the property.

No. 1492. Decided April 4, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,238, dismissing a bill for specific performance. Affirmed.

Mr. Charles C. Cole, Mr. R. Golden Donaldson, and *Mr. Heber J. May* for the appellant.

Mr. J. J. Darlington for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree dismissing a bill for specific performance upon a demurrer thereto.

The contract of which performance is sought to be compelled reads as follows:

"For the sum of one dollar and other valuable considerations, I hereby agree and bind myself and my heirs to sell to George C. Hazelton, and to deliver by good and sufficient deed at any time during the present session of Congress, and such additional time as may be necessary for settlement under appropriation by that Congress, part of lot numbered two (2), in square numbered one hundred and forty-three (143), being six thousand, seven hundred and twenty (6,720) feet, more or less, and all the ground owned by me in said square with the improvements thereon, for the sum of nine thousand dollars ($9,000).

"Should the said George C. Hazelton fail to take advantage of and accept this offer as above within the time mentioned, then this agreement shall be null and void.

"Witness my hand this 11th day of December, A. D. 1902.

"(Signed) FRANCIS MILLER."

Having set out the contract the bill proceeds as follows:

"4. A part of the consideration mentioned in said contract moving to the plaintiff from the defendant was services rendered both before and after the making of said contract by the plaintiff in bringing the said property to the attention of the committees of Congress as a suitable and appropriate site for a hall of records. Plaintiff, at the instance of the said defendant, who desired to sell said property at a reasonable price, had expended much time and labor and expended considerable money, prior to the making of that contract and has also subsequent thereto, in calling the attention of the committees of Congress to the eligibility and desirability of the land in said square for the purpose aforesaid, and during the two last sessions of Congress plaintiff devoted a great deal of his time to the ascertainment of the condition of the title, the condition of the land as affording a good foundation, the condition, size, and durability of the sewers in the streets surrounding said square, the kind, character, and condition of the buildings thereon, and other facts tending to show that the said square was a desirable location for said building, and furnishing them to and laying them before the said committees of Congress in order to enable them to act intelligently upon the matter. At the first session of the 57th Congress plaintiff called the attention of the committees of Congress to said location and, at the request of the members of said committees, he ascertained and collated various facts in relation thereto, and subsequently during said session, at the like request of said committees, prepared a bill to be introduced in Congress authorizing the purchase of said square for said purpose, but the bill did not pass at that session. Subsequently at the second session of said Congress he again called the attention of the committees to the said real estate and at their like request collected and furnished them other important information in relation to it, and employed others to aid and assist him in securing such information to demonstrate to said committees the propriety of said purchase. He also, at his own expense, caused many of said facts to be put in print and furnished them to the members of said committees for their information and for the use of other members of Congress when said bill should come up for debate. At several sessions of Congress he appeared before said committees and filed briefs and made arguments, the object and tendency of which were to show that upon all of the facts presented in relation to this and other sites mentioned and discussed, the square above mentioned was better adapted to the purpose of a hall of records than any other in the city. Said committees all the time understood that he was the owner of some of said property and was acting as attorney for other owners of the said real estate. At the second session of said Congress said bill was passed authorizing the purchase or condemnation of said square for the purpose aforesaid and appropriating the sum of four hundred thousand dollars ($400,000), or so much thereof as might be necessary to pay for the same. Said act provided that if the Secretary of the Treasury could by negotiation acquire said square or any part thereof at such figures as might be deemed reasonable, that he might purchase instead of condemning. After the passage of said bill, with the knowledge and acquiescence of the said Miller, the plaintiff commenced negotiations with the proper officers of the Treasury Department to make a sale of said property to the United States and on the — day of Aug. 1903, agreed with said officers upon a price which they were willing to pay for said property rather than to condemn it, which aggregated about fourteen thousand three hundred and ninety-five dollars and fifty cents ($14,395.50), and informed the defendant that such contract had been consummated, but that it would take

Digitized by Google

some time for the Treasury Department to investigate the title and make arrangements for the payment of the money, and the proper Treasury officers are now engaged in such work and the time has not yet arrived when they can properly, under said act of Congress, pay out the money for the real estate hereinbefore mentioned, and the necessary time for settlement under said appropriation has not yet expired.

"5. The plaintiff further shows that after he had informed the defendant had knowledge of the sale which he had made to the United States of said property, the defendant intimated to the plaintiff that he did not intend to keep his contract with him, but to convey the property direct to the United States and demand the right to receive from the United States the full sum of money which the Government has agreed to pay for said lot of land, and denies the right of the plaintiff to the purchase money for which said property has sold in excess of the nine thousand dollars ($9,000)."

It is further alleged that on October 5, 1903, complainant tendered to defendant the said sum of $9,000, and demanded the execution by him and his wife of a conveyance of the title. Among other prayers is one for an injunction restraining the defendant from conveying the property to the United States and receiving any money therefor.

The demurrer raises several questions, only one of which we find it necessary to consider.

The bill was rightly dismissed if for no other reason than a want of jurisdiction in equity.

The essential foundation of the jurisdiction to entertain a bill for the specific performance of a contract is the inadequacy of the remedy at law for its breach. Ordinarily, where the contract is for the conveyance of land, it is assumed that the remedy at law is inadequate and incomplete. But in this case that inference is negatived by the express allegations of the bill. The complainant alleges that he has entered into a binding contract to convey the property to the United States for the agreed sum of $14,395.50, and seeks a conveyance from the defendant, whose solvency is not even denied, for the sole purpose of performing that contract.

Having no other purpose, and having fixed and rendered certain the damages sustained by the breach of the contract, his sole remedy is at law. Further discussion, and the citation of authorities in support of this conclusion are unnecessary.

The decree must be affirmed with costs, and it is so ordered.

Affirmed.

A Treatise on the Law of Notes, Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMaster, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

Law of Notes.

1654 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eliza M. Higley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,771. Admn. 14-3t

Herbert L. Franc, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George G. Bragunier,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905. NELLIE C. BRAGUNIER, 17 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,822. Administration. 14-3t

C. G. Lee, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Addison B. Atkins,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905. ANNABEL LEE ATKINS, 1318 15th st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,801. Administration. 14-3t

E. H. Thomas, Solicitor

In the Supreme Court of the District of Columbia.

Calvin Pardee et al., Complainants, v. George W. Clark, Phebe W. Ross, Defendants. No. 25,248. Equity Docket No. ——.

The object of this suit is to obtain release of deed of trust recorded January 19, 1872, in the land records of the District of Columbia, in liber 664, folio 454, made by Jane R. Elliott to said George W. Clark, trustee, to secure said Phebe W. Ross $1,700, represented by notes, the last of which matured the 18th day of January, 1875. On motion of the complainants, it is, this 6th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 14-3t

Digitized by Google

Legal Notices.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph R. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. LOTTIE H. JOHNSON, 1804 Belmont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,796. Administration. 14-3t

---

Jos. A. Burkart, Attorney

In the Supreme Court of the District of Columbia,

Holding a Special Term for Probate Court Business.

In the Matter of the Estate of Charles B. Osborne, Deceased. Administration No. 10,241.

The administrator d. b. n. of the estate of Charles B. Osborne, deceased, having reported a sale for the sum of six thousand ($6,000) dollars of the following described real estate belonging to said estate: East twenty feet front on G street by a depth of eighty-five feet of lot number five in John Tayloe's subdivision of part of square five hundred eighteen (518) in the city of Washington, in the District of Columbia, subject to a subsisting encumbrance thereon of five thousand ($5,000) dollars, it is this 5th day of April, 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the **5th day of May, 1905.** Provided a copy of this order be inserted in The Washington Law Reporter once in each of three successive weeks before said last named date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

---

F. G. Coldren, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Philander Lucas, Deceased.

No. 12,772. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederick A. Fenning, it is ordered this 4th day of April, A. D. 1905, that notice be and hereby is given to the unknown **heirs and next of kin of said Philander Lucas**, and to all others concerned, to appear in said court on **Tuesday, the 9th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

---

Samuel Maddox, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Richard Goodhart**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of April, 1905. ELLMORE HARRISON GOODHART, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,064. Administration. 14-3t

Legal Notices.

Nathl. Wilson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Nathaniel Carusi**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 28th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of April, 1905. CATHARINE A. CARUSI, Administratrix, by Nathl. Wilson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,074. Administration. 14-3t

---

W. C. Martin, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Henry L. Hyman, Deceased.

No. 11,998. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by John B. Hyman, it is ordered this 5th day of April, A. D. 1905, that notice be and hereby is given to **Charles M. Hyman**, and to all others concerned, to appear in said court on **Friday, the 12th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

---

George E. Fleming, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline Day**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, formerly UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,835. Administration. 14-3t

---

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Joseph J. Johnson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 25th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of April, 1905. JAMES T. HUNTER, 612 F st. N. W., Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,697. Administration. 14-3t

Digitized by Google

Legal Notices.

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha Cutler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1905. CHARLES R. ROWZEE, 3024 15th st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,802. Administration. 14-3t

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George R. Chapman, Deceased.
No. 12,699. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John C. Norwood, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Harry Chapman**, Hoadly Postoffice, Agneville, Virginia; **Eliza Ann Jackson, nee Chapman**, Piscataway Postoffice, Prince George Co., Maryland; **George Chapman**, Washington, D. C.; **Harriet Chapman Carroll, Mary Chapman Carroll, Frances Ford, Arthur Ford, and William Ford**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Douglas M. Scott**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of April, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,063. Administration. 14-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hugh Masterson, Deceased.
No. 12,308. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non cum testamento annexa on said estate, by Alice E. Masterson, daughter of said deceased, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Joseph I. Masterson**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Legal Notices.

Chas. W. Boyle, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Francis B. Conner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. EDITH C. CONNER, 1106 I st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,814. Administration. 14-3t

In the Supreme Court of the District of Columbia.
Wm. H. Frey et al. vs. Elizabeth T. Frey et al.
Equity, 22,055.

Jesse H. Wilson and Levin S. Frey, trustees, having reported to the court an offer of twenty-seven hundred (2,700) dollars by Harry S. Welch, to be paid in cash on ratification of the sale, for lot fifty-one (51) and the south two (2) feet of lot fifty (50) by width thereof, in Marche's subdivision of square eight hundred and ninety-six (896), as per plat in the office of the surveyor, in liber 17, folio 43, it is this 4th day of April, 1905, ordered that said offer be accepted, and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **5th day of May, 1905**. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-3t

Gordon & Gordon, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of William D. C. Murdock,
Deceased. No. 9404. Administration Docket, 26.

William A. Gordon, administrator herein, having settled his accounts and made partial distribution of the funds in his hands, and having made application to the court to appoint a time and place for making full and final distribution of the balance remaining in his hands belonging to the estate of said William D. C. Murdock, it is this 31st day of March, 1905, ordered that notice be and it hereby is given to all persons having any claim to or interest in said fund, that the court has appointed **April the 28th, 1905, at 10 o'clock A. M.**, as the time and said court room as the place for making full and final payment and distribution of said fund remaining in his hands undistributed, when and where all persons interested in or entitled to the same are to attend. Provided a copy of this order be served on the next of kin of said decedent at least ten days before the appointed day and a copy of this order be published in The Washington Post and Evening Star and The Washington Law Reporter once in each of three successive weeks before said appointed day, the first publication to be not less than 20 days before said day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

H. W. Sohon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary Ellen French, Deceased.
No. 12,792. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William B. French, it is ordered, this 5th day of April, A. D. 1905, that notice be and hereby is given to **Peter Brady, Richard Brady, Henry Brady, Robert Brady, John Brady, Charles Brady, James Brady, and Margaret Brady**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Digitized by Google

Legal Notices

SECOND INSERTION.

C. W. Darr, Solicitor

In the Supreme Court of the District of Columbia.

Dudley T. Hassan v. The Union Investment Company of the District of Columbia et al.

Equity No. 24,692.

Upon consideration of the reports of Charles E. Roach and Charles W. Darr, receivers, filed herein, stating that they have sold the properties described in said reports and in these proceedings, as follows: The south one-half of lot numbered eleven (11) in square numbered ten hundred and eighteen (1018), to Adam A. Weschler for the sum of five hundred and thirty-four dollars and fifty cents ($534.50), and lots numbered seventy-three (73), seventy-four (74), and seventy-five (75), in A. M. McLachlen and Robinson White, trustees, etc., and T. H. G. Todd's subdivision of original lots in square numbered ten hundred and twenty-eight (1028), as recorded in the office of the surveyor of the District of Columbia in liber No. 17, folio 44, to Raymond J. Cooley for the sum of eighteen hundred dollars ($1,800.00), it is, by the court, this 27th day of March, A. D. 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **10th day of April, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 13-3t

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ernst Willner, Deceased.
No. 12,770. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth Willner, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to **unknown heirs at law and next of kin,** and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the **estate of Joseph Stump,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. CHARLES H. BAUMAN, 323 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. 13-3t

Turner & Mitchell, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the **estate of Otto Broderson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. AMELIA BRODERSON, 689 Sheridan st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,455. Administration. 13-3t

Legal Notices.

P. A. Bowen, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the **estate of Mary A. L. Carpenter,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. ARTHUR DUDLEY CARPENTER, The Highlands, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,794. Administration. 13-3t

Fred L. Rosemond, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Alice V. C. Williams, Deceased.
No. 12,317. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles M. Campbell, it is ordered, this 29th day of March, A. D. 1905, that notice be and hereby is given to **E. J. Williams and Helen Williams,** and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

Irwin B. Linton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas J. Parker,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. THOMAS D. PARKER, 313 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,267. Administration. 13-3t

Gittings & Chamberlin, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Harriet Ann Butler,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. WALLACE McK. STOWELL, Lincoln Nat'l Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,689. Administration. 13-3t

Daniel W. O'Donoghue, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick I. Moran,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. MARY MORAN KELEHER, 3009 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,808. Administration. 13-3t

Digitized by Google

Legal Notices.

Robert S. Hume, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Laura Edith Barron**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. GEO. S. FINCH, 317 Queen st., Alex., Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,788. Administration. 13-3t

---

Stanton C. Peelle, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Altschuh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **27th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. LOUIS P. ALTSCHU, 2007 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,798. Administration. 13-3t

---

Carlisle & Johnson, Attorneys

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In Re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin. No. 10,117. Adm. Docket.

On consideration of the petition of Georgia Anne O'Neill, executrix, it is, by the court, this 29th day of March, A. D. 1905, ordered that the sale of lot twenty in Webb and Bradley, trustees', subdivision of square five hundred and twenty-eight, as per plat recorded in liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Kate Harbaugh, at and for the sum of thirty-five hundred dollars ($3,500) cash, subject to the payment to Moore and Hill of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed unless cause to the contrary be shown on or before **the first day of May, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-named day. WENDELL P. STAFFORD, Justice. A true copy. Test: JAMES TANNER, Register of Wills. 13-3t

---

Fulton Lewis, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of **Alberta Stewart**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of March, 1905. ALBERT STEWART, Administrator c. t. a., by Fulton Lewis, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,335. Adm. 13-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

Charles J. Murphy, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In the Matter of the Estate of Annie Partridge, Deceased. No. 12,767.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Charles J. Murphy, it is ordered this 23d day of March, A. D. 1905, that notice be and hereby is given to **Frederick Griffith and Belle Griffith, known in religion as Sister Marie of the Sacred Heart**, and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

---

Eugene A. Jones, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In the Matter of Estate of Patrick Curtin, Deceased.

Administration. No. 12,759.

ORDER OF PUBLICATION.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of the said deceased, and for letters testamentary on said estate, to Honorah Curtin, it is ordered this 23d day of March, 1905, that notice be and hereby is given to **John N. Curtin and James O'Hagan**, and to all others concerned, to appear in said court on the **1st day of May, 1905, at ten (10) o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three (3) successive weeks before the return date herein mentioned, the first publication to be not less than thirty (30) days before said return date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

---

John J. Hamilton, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Mary A. McGolrick, Deceased.

No. 12,797. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton and Michael J. Colbert, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to the **unknown next of kin and the unknown heirs of Mary A. McGolrick**, and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

---

THIRD INSERTION.

Edw. E. Holman, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William W. Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1905. EDWARD B. HOLMAN, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,682. Administration. 12-3t

Digitized by Google

Legal Notices.

Joseph R. Fague, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Richard A. Arnold**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **21st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of March, 1905. RICHARD W. EMMONS, 328 Putnam ave., Brooklyn N. Y., FREDERICK S. EMMONS, 328 Putnam ave., Brooklyn, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,773. Administration. 12-3t

---

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hennie V. Prince**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. ABRAHAM D. PRINCE, 1526 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. 12-3t

---

Andrew Y. Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Baldwin S. Moore**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. ORRA G. MOORE, 1782 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,779. Administration. 12-3t

---

Jos. T. Ferry, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Ferry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH T. FERRY, 1200 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,781. Administration. 12-3t

---

Edward S. Bailey and Tucker & Kenyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Hayes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **16th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of March, 1905. JOSEPH H. CURRAN, 315 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,161. Administration. 12-3t

Legal Notices.

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frederick M. Detweiler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest; JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. 12-3t

---

Charles S. Shreve, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Asbury R. Johnson, Deceased.
No. 12,761. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Richard M. Johnson, it is ordered this 22d day of March, A. D. 1905, that notice be and hereby is given to **Frank Johnson**, and to all others concerned, to appear in said court on **Wednesday, the 26th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

---

Geo. H. White, Solicitor

In the Supreme Court of the District of Columbia.
Alice M. Allen, nee Chick, Complainant, v. John W. Allen, Defendant.
No. 25,181. Equity Docket, No. —.

The object of this suit is to annul the marriage contract solemnized between the complainant and defendant on the 29th day of November, 1904, upon the grounds that said marriage was procured through fraud, intimidation, and threats on the part of the defendant, and that said defendent is alleged to have had a living wife from whom he had never been divorced at the time of said marriage. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, it is, this 22d day of March, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

---

Leckie, Fulton & Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of George J. Drew, Deceased.
No. 12,754. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ella M. Drew, widow of the deceased, it is ordered this 21st day of March, A. D. 1905, that notice be and hereby is given to **Charles P. Drew, Elizabeth M. Deming, Joseph Drew, Bertha Drew Smith, Mabel Drew, Ethel Drew, Mary Drew, Gilbert Drew, Ernest Drew, Addie Drew Gasch, George Drew, Leon Drew, Owen Drew, William D. Drew**, and to all others concerned, to appear in said court on **Friday, the 28th day of April, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Digitized by Google

Legal Notices.

A. A. Birney and P. R. Hilliard, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Nora Feeny,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. JOSEPH A. O'HARE, 1008 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,498. Administration. 12-3t

Hugh M. Sterling, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas M. Exley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1905. CLARENCE M. EXLEY, 1449 Sheridan ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,749. Adm. 12-3t

Wolf & Rosenberg, Attorneys
In the Supreme Court of the District of Columbia.
Holding a Probate Court.
In re Estate of John Curtis, Deceased.
No. 11,974. Admr.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 24th day of September, 1900, purporting to be the last will and testament of John Curtis, deceased, has been returned as to Thomas E. Waggaman and Patrick Curtis "not to be found," it is, this 21st day of March, A. D. 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **18th day of April, 1905,** and that this order and a copy of the said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period of time in The Washington Times. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

ISSUES.

1st. Was the said John Curtis at the time of the alleged execution of the said paper writing dated September 24, 1900, of sound and disposing mind and capable of executing a valid deed or contract?

2d. Was the execution of said paper writing dated September 24, 1900, by John Curtis procured by undue influence or misrepresentation or artifice exercised upon or practiced against said John Curtis by any person or persons? 12-4t

Barnard & Johnson, Solicitors
In the Supreme Court of the District of Columbia.
Kate F. Steele, Complainant, v. William Masi et al., Defendants.
No. 21,010. Equity Docket 48.

Guy H. Johnson and Wilton J. Lambert, trustees, having reported to the court the offer of John Mariner to purchase the original lot numbered eleven (11) in square numbered two hundred and eighty-eight (288), improved by premises No. 723 Thirteenth street northwest, in the city of Washington, District of Columbia, for the sum of thirty thousand dollars ($30,000), payable all cash, and subject to a commission of seven hundred dollars ($700.00) to Moore & Hill (inc.), it is, by the court, this 23d day of March, A. D. 1905, adjudged, ordered, and decreed that upon compliance with the terms of said offer the same be accepted and the sale of said property to said John Mariner be ratified and confirmed, unless cause to the contrary be shown on or before **April 25, 1905.** Provided a copy of this order be published once a week for three (3) successive weeks before said day in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-3t

Legal Notices.

Daniel W. O'Donoghue, Solicitor
In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young;** the unknown heirs, devisees, and alienees of **Abraham Young; Eleanor Young,** and the unknown heirs, devisees, and alienees of **Eleanor Young,** cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.
mar. 10-17, apr. 7-14, may 12-19

FIFTH INSERTION.

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker,** deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 15

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - APRIL 14, 1905

CONTENTS.

Editorial 225
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Allan L. McDermott, Receiver, etc., appellant, v. Charles E. Severe, by next friend 226
The Columbian Correspondence College, appellant, v. Robert J. Wynne, Postmaster-General, et al 230
The District of Columbia, appellant, v. J. Edward Chapman 232
Legal Notices 233

THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Negligence; Distance Between Railroad Tracks; Size of Cars; Liability of District of Columbia.

In Smith v. District of Columbia, the appeal was from a judgment entered upon a verdict directed for the defendant in an action by the administrator of the estate of a decedent to recover compensation for his death, claimed to have resulted from an alleged omission of duty by the District of Columbia. The deceased was a passenger on a street railway car, and while two cars were passing each other his elbow was caught and he was pulled from the car in which he was riding and killed. It appeared the distance between the large cars, then in use, while passing each other at the point of the accident, was about 2½ inches, though the space between the tracks was 3 feet 7 inches. It was sought to hold the District liable on the ground that it was its duty to regulate the manner of the construction and maintenance of railway tracks in the streets of the city, and the selection and operation of the cars used thereon; and because of default in performance of that duty it was liable in damages for the injuries causing the death of plaintiff's intestate. The trial court denied this contention, and directed a verdict for the District, upon which there was judgment; and the ruling is affirmed by the Court of Appeals, in an opinion by Mr. Justice Anderson, of the Supreme Court of the District, who sat with the Court of Appeals in the hearing of the case.

Husband and Wife; Divorce; Costs of Appeal.

In the case of Morgan v. Morgan, a petition was presented asking the court to require the respondent to pay over to the petitioner a sufficient sum to enable her to prosecute an appeal from the decree of the court below, the same to cover the cost of the transcript of record, and a reasonable attorney's fee. It also prayed an order enjoining the respondent from taking possession of certain real estate then in the occupation of the petitioner and her children. The decree below granted the respondent an absolute divorce on the ground of petitioner's adultery; and while providing for the payment of accrued alimony and counsel fees, and for the support and maintenance of three children whose custody was awarded to petitioner, and for payment of the costs of the proceeding by the husband and the party named as co-respondent, denied an application to compel the husband to pay a further sum to enable petitioner to prosecute an appeal from said decree. An appeal was noted, and an appeal bond filed; and thereupon, without filing the transcript of record in the Court of Appeals, the appellant filed her petition in that court to compel the husband to provide the costs of appeal. The power of the court to do this was denied by the husband. The court, while not deciding the question of its power, in a proper case, to pass such an order, holds that it has no jurisdiction to exercise it in the case presented by the petition. Without having before it the transcript of record, there is no proper foundation for the exercise by the court of discretion upon a prayer for an order either affecting the merits of the appeal or the charges incidental to its prosecution. The petition was therefore denied, in an opinion by Mr. Chief Justice Shepard.

Removal of Snow From Sidewalks.

In the case of Lee v. District of Columbia, the question involved was the validity of the regulation promulgated by the Commissioners of this District requiring the removal of snow from the sidewalks. The judgment of the Police Court is reversed in an opinion by Mr. Justice Morris, which reaffirms the previous decision in the case of Coughlin v. District of Columbia, wherein the regulation was held invalid, the Commissioners being without lawful authority to make the same. As the law now stands, the duty of removing such obstructions is upon the Commissioners, and they can not escape the performance of that duty by attempting to impose it upon individual citizens.

The mandate was stayed until the further order of the court to enable the Commissioners to apply to the Supreme Court of the United States for a writ of certiorari.

Digitized by Google

Court of Appeals of the District of Columbia.

ALLAN L. McDERMOTT, RECEIVER, ETC., APPELLANT,

v.

CHARLES E. SEVERE, BY NEXT FRIEND.

RAILWAYS; NEGLIGENT CONSTRUCTION; EVIDENCE; INSTRUCTIONS; DAMAGES.

1. In an action for personal injuries, where the question is whether the defendant railway company was negligent in the construction and maintenance of its track at a crossing, it appearing that a space 2½ inches wide was left between the inner edge of the rail and the crossing board, in which space the plaintiff, a child of 7 years, caught his foot and was run down, while evidence of the general custom of other railways in the matter of construction, maintenance, and operation is probably proper for consideration of the jury in determining the question of negligence, it is neither conclusive nor of especially great weight; and an instruction based entirely upon the evidence as to the custom of railways in respect of the space usually left between the inner edge of the rail and the crossing board is properly refused.
2. The fact that no similar accident had ever before occurred within the knowledge of the defendant, even if admissible, is of no weight in determining the question of negligent construction.
3. *Held*, that under the facts and circumstances of the case, the question whether the motorman, who had ample opportunity to do so after he first saw the plaintiff with other children on or near the track, was not guilty of negligence in failing to get his car under such control that he could have stopped it in time to avoid running over plaintiff after he actually saw that his foot was caught between the board and the rail, was properly submitted to the jury for determination.
4. A requested instruction, that if the motorman sounded his gong when far enough away from plaintiff and his associates so that they had sufficient time to leave the track before the car reached them, he had the right to assume they would not do so, and was not required to commence to stop the car until such time as he discovered the plaintiff had his foot caught between the rail and board, held properly refused.
5. Where an objectionable element is contained in a charge that is correct in general and is not stated as an independent proposition, a general exception to the entire charge is not sufficient.
6. In an action for personal injury to a child of 7 years, resulting in the loss of a leg, the jury held properly instructed they might take into consideration in awarding damages the pecuniary loss directly resulting from the injury which they may find from the evidence he is reasonably likely to sustain hereafter in consequence of his being deprived of one of his legs.

No. 1464. Decided April 4, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,838, entered upon a verdict for the plaintiff in an action for personal injuries. Affirmed.

Mr. C. C. Cole and *Mr. J. J. Darlington* for the appellant.

Mr. A. S. Worthington and *Mr. Wm. Meyer Lewin* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a judgment in an action for personal injuries.

Plaintiff, then a child of seven years, lived with his father near the line of the double track electric railway, between Riverdale and Washington, operated by defendant as receiver of the City and Suburban Railway Company.

Plaintiff's father and mother had gone on a short visit to Cape May and were expected to reach home, by way of the electric railway from Washington, on Sunday, August 31, 1902, about 2 o'clock in the afternoon. Erickson Severe, the plaintiff, had two brothers, Edward and Raymond, of the age of 9 and 5 years respectively. About 1.30 o'clock the three boys went to the customary stopping place of the cars, when passengers desired to get on or off, which was indicated by signs upon poles erected near the tracks.

There was no street or public highway crossed by the railway at the point, but, under agreement with the donor of the right of way, the defendant had constructed and maintained a board crossing on both tracks, which in the evidence was spoken of as a platform. Persons often crossed on foot to reach the fields and waters on the other side. The evidence tended to show that the boys went there to meet their parents upon their expected arrival.

The eldest boy, Edward, testified that they stayed about an hour together waiting near the track, sitting for a time near a small power house situated near the railway. That he left his brothers standing on the platform and went to the house for a drink of water, intending to return and wait for his parents. On his return Raymond met him at the gate, saying Erickson's foot was caught at the track. That he ran down and saw his brother had his foot caught between the rail and the boards of the crossing; saw a car coming down the track at the same time from 50 to 60 feet away. That he was on the boards and waved his hat and called to the motorman to stop. That the car did not stop until after it struck his brother.

Plaintiff corroborated his brother's evidence in regard to their coming to the tracks, and his brother's return to the house for water. He said that after Edward left Raymond's foot got caught between the rail and board. That he did not notice what Raymond had been doing just before this. That he went to Raymond and loosed his foot, and just as he was going back his own foot caught as he was crossing over. Witness could not pull his foot out and Raymond went to tell Edward. Raymond and Edward met at the gate and came running back. His back was to the car when he heard it coming. He turned his head and saw it coming. He waved his hand. Edward was waving his hat up and down and calling to the motorman. Raymond was behind Edward and waving also. The car was close on him when he saw it first. He saw the motorman when he tried to stop, but he was struck and dragged two or three yards. His left foot was the one caught. Other evidence showed that the plaintiff's leg was badly mangled; that he was carried in the car to Washington, and that his leg was amputated at the hospital.

A passenger on the car testified that the car stopped with a sudden jolt, and that at the time two little boys were on the bank jumping up and down and hallooing. Another passenger testified for defendant that his attention was attracted by the repeated ringing of the bell, and looking out he saw a boy on one of the tracks waving his hand. Did not see the plaintiff. The next thing that occurred was a jolt as the car was brought to a stop. The motorman was putting on the brakes as hard as he could.

Digitized by Google

could not tell how far the car went from the first time that he saw the boy mentioned.

The motorman, testifying for defendant, said that he saw the boy on the track about 300 or 400 feet away. That three boys were on the track running and jumping backwards and forwards across the tracks. That about 150 feet away he sounded his gong. That two of the boys got back on the bank and one stayed on the track. That he rang the gong repeatedly. That he was about 35 or 40 feet away when he saw that the boy was not going to get off the track. That he applied the brakes with all his power and reversed the power, stopping the car as quickly as he could. That when he stopped and got off he found the boy about the center of the car. That he had often seen the same boy and others standing on the track, and that as the car got almost to him he would jump off, clap his hands and laugh. That he did not see either of the two boys on the bank wave their hands. Plaintiff did not wave to him, and had his face towards him when struck. That he saw his foot was hung when he was about 30 or 35 feet from him. That the car was between 36 and 38 feet in length, and was running about 8 or 9 miles per hour. Another motorman testified that he had frequently observed boys, plaintiff among them, playing on the crossing and jumping off the tracks ahead of the cars. A witness living near by testified to the same effect. There was testimony tending to show that the boards of the crossing fitted closely to the outside rail. On the inside there was a space of from 2 5-8 inches to 2 11-16 inches between the edge of the board and the tip of the rail, in which the flange of the wheel ran. The rail was the ordinary T rail. The board was square-edged, and under the top of the rail the space widened. The shoe which plaintiff wore at the time was produced and the heel showed that it had been caught in this space.

Defendant introduced several witnesses, among them the contractor who laid the crossing and others familiar with such construction, whose evidence tended to show that it was customary upon railways generally to leave a space of from 2⅛ to 2½ inches for the entry and play of the flange of the wheel on the inside of each rail. One of these, a general contractor for such work, said that on steam railways the width is usually from 2¼ to 2½ inches because the wheels have a little more tread; that the space is left because if a stone should get in the space the flange would press it down, preventing derailment; that the stone ballast will work out and leave the space deeper, and that work has to be kept up in repair, and sometimes the board must be taken up to fill the low place. If not attended to the road will work out of surface. That in all the crossings on defendant's road the spaces were made from 2 inches to 2⅛ inches in width. Another of these having testified that the usual space left on railways was from 2 to 2½ inches, said that the flange of the rail level was ¾ of an inch thick and tapered to practically nothing. He further said that in the city streets a special guard and grooved rail is laid.

Plaintiff, in rebuttal, offered evidence tending to show that at two other crossings on defendant's line the space left between the board and the rail was much narrower than the one in question, there being just width enough for the wheel flange and no more. Also that there was no filling of earth or gravel between the board and rail at the time, and that the board was 2 inches thick, and that subsequently the defendant had filled it in, but the filling would wash out from time to time.

The plaintiff and his elder brother denied that they had been in the habit of playing on the tracks and jumping off as claimed by defendant's witnesses. The younger boy, Raymond, was offered as a witness, but the court pronounced him incompetent after examining him for the purpose.

The jury returned a verdict for the plaintiff for $15,000. The court also required them to return answers to the following special issues:

"1. Was the defendant guilty of negligence in the improper construction or maintenance of the crossing?

"2. Was the defendant guilty of negligence in the improper management of the car?

"3. Did the motorman do all in his power to stop the car as soon as he saw the plaintiff's foot was caught in the space between the rail and plank?" They answered "yes" to the first two of these and disagreed as to the third. "Thereupon," as recited in the record, "counsel for the plaintiff consent that the jury may answer said third interrogatory in the affirmative, but said jury was discharged from further considering said interrogatory."

It is conceded, by reason of the special findings of the jury, that the defendant was guilty of negligence, not only in the construction and maintenance of the crossing, but also in the management and control of the car; that error in the instructions upon both points must be shown in order to obtain a reversal of the judgment, because either finding alone is sufficient support therefor. On the first of these issues the court charged the jury as follows:

"The construction there is said to be faulty. Of course in determining the question whether or not it is faulty, you must consider all the testimony in the case, the construction that has been used, and the reason that is given for making the construction in the way it was made; and yet if you find that it was obviously dangerous, notwithstanding the testimony, this company should not be held free from blame for adopting it. That is one question upon which you should exercise your judgment, that is upon the question whether or not there was obvious danger in a construction like this, in the width of the hole, in the depth of the hole, in view of the place where it was located and the fact that children did go on this place, which was known to the officers and employees of the defendant, and whether or not they were in the habit of crossing at that point and playing upon that track. It is for you to determine whether or not, under all of these circumstances it was a dangerous situation and should have been observed by the defendant."

The court also gave the following extract from the instruction asked by the defendant and refused as a whole: "And the jury should determine the question whether the construction was negligent in the light of the facts prior to the accident and not afterwards. And

Digitized by Google

the question upon that point is not whether such an accident was possible, but whether it was reasonably to be anticipated."

The defendant asked the following special instruction, which was refused:

"If the jury shall find from the evidence that the crossing or platform at the place where the accident happened was constructed in the usual and ordinary way of constructing such crossings in the District of Columbia and elsewhere, and that such construction had been in use in that and other places for some years prior to this accident, and that no accident of the kind in question had occurred prior to that time in the District of Columbia or elsewhere to the knowledge of the defendant's officers or agents, and that a reasonably prudent man would not have anticipated such an accident from such construction, then the verdict should be for the defendant. And the jury should determine the question whether the construction in question was negligent in the light of the facts prior to the accident and not afterwards. And the question upon that point is not whether such an accident was possible, but whether it was reasonably to be anticipated."

The instruction given left the question of negligent construction and maintenance fairly to the jury upon all of the evidence relating thereto, and there was no error in refusing defendant's special instruction based entirely upon the evidence relating to the general custom of railways in respect of the space usually provided between the inner edge of the rail and the edge of the crossing board. Evidence of the general custom of other railways in the matter of construction, maintenance, and operation is not always admissible even, and though probably proper, in this case, for the consideration of the jury in the determination of the question of negligence submitted to it, it is neither conclusive nor of specially great weight. Wabash Ry. Co. v. McDaniels, 107 U. S. 454, 461; T. P. R. Co. v. Behrman, 189 U. S. 468, 470; G. T. R. Co. v. Richardson, 91 U. S. 454, 469; Weaver v. B. & O. R. Co., 22 Wash. Law Rep. 393, 3 App. D. C. 436, 448, and cases cited. See, also, Spooner v. D. L. & W. R. R. Co., 115 N. Y. 22; R. R. Co. v. Walter, 147 Ill. 60, 64; L. E. & W. R. Co., v. Mugg, 132 Ind. 168, 174; Hamilton v. R. R. Co., 36 Iowa, 33, 37; Koons v. St. L. & I. M. R. Co., 65 Mo. 592; Helfenstein v. Medart, 136 Mo. 595, 617; Mayhew v. Sullivan Mining Co., 76 Me. 100, 111; City of Champaign, 50 Ill. 61, 65.

The question as here presented is quite different from that in Asphalt Co. v. Mackey, 15 App. D. C. 410, 425: 28 Wash. Law Rep. 35, upon which the appellant relies. There, in an action for injury to an employee, the evidence showed that the appliance was one commonly in use and considered safe, that it was not out of repair, and that the injury was due to careless handling by a fellow servant, and it was held that it was not error to refuse an instruction permitting the jury to find that the defendant had been negligent because of its failure to substitute for a reasonably safe appliance in general use another, and, in the opinion of the jury, a superior one.

Under an assignment of error on the refusal of the court to direct a verdict for the defendant, the contention of the appellant, on the argument, has been that the evidence of the general custom of construction of like crossings is conclusive proof of the exercise of reasonable care, but the refused instruction does not go that length.

As before said, the evidence in this regard was clearly not conclusive; nor was it of an exceptional character and weight that required the court to give it emphasis in charging the jury. It is to be remembered also that the customary space left to receive the flanges of the car wheels was proved to have been something less, even upon steam railways, than that at the place of the accident; that there was evidence tending to show that the flanges were not more than three-fourths of an inch wide at the surface of the rail, and narrowed sharply for the very short distance to their rims; that there was evidence tending to show considerably less space for the purpose at other of defendant's crossings; and that though no similar accident had been known to have occurred before on any of defendant's crossings, the foot of the plaintiff's younger brother had been caught in the same opening a few minutes before. Moreover, that no similar accident had ever before occurred within the knowledge of the defendant, a fact upon which stress is laid in the refused instruction, is of no weight in determining the question of negligent construction. Many well considered cases hold that such evidence is not even admissible. Hodges v. Bearse, 129 Ill. 87, 89; Burgess v. Davis Sulphur Ore Co., 165 Mass. 71, 75; Bloor v. Town of Delafield, 69 Wis. 273, 277; Temperance Hall Assn. v. Giles, 33 N. J. L. 260, 263. The question of admissibility, however, it is not necessary here to decide. It may be added also that in one of the cases above cited the injury was caused by a like construction, and the question of negligence was held one proper for the determination of the jury. Spooner v. D. L. & W. R. Co., 115 N. Y. 22, 33.

On the second point the defendant requested the following special instruction, which was refused:

"If the jury shall find from the evidence that the motorman sounded his gong when he was far enough away from the plaintiff and his associates so that they had sufficient time to leave the track before the car reached them, he had the right to assume that they would do so, and he was not required to commence to stop the car until such time as he discovered that the plaintiff had his foot caught between the rail and plank; and if they shall further find that as soon as the motorman made such discovery he did all in his power to stop the car before it struck the plaintiff, then they should find for the defendant."

Several other instructions of like purport were asked and refused, but as they comprehend the first point also and contain the matter relating to the construction of the crossing that has been passed upon they will be omitted.

The court thereupon charged the jury as follows:

"On the other question, as to whether the motorman did all that he could possibly do under the circumstances to avert this danger you will have to consider all of the testimony,

Digitized by Google

not only that of the plaintiff, but of the defendant, and try to reconcile it so far as you can in order to ascertain where the fact lies. Was it prudent in that motorman, under all the circumstances of the case, to calculate that these children would be off from that track and out of danger when he got there? Or was it requisite for him, as a prudent and reasonable man, to have his car under control, so that he could stop very suddenly in case they were not out of danger when he got there? Of course, in determining that question you are to consider what had been the habit of children about playing at that place. You are not to attribute any contributory negligence to the plaintiff, because this plaintiff is less than seven years of age and the law does not give him discretion. Adults have to look out for children of that kind. But at the same time he may have been in the habit of jumping off and on that track in such a way that the motorman might have been justified in concluding there would be no danger. You are to look at all the surrounding facts and see whether that is true, whether he was justified in that calculation. There was one boy still smaller than the boy who was injured, and according to the motorman's own statement the three boys were running back and forth across the track. It is for you to determine whether or not he should have gotten into close proximity to them without getting his car under such control that he could have stopped very suddenly if necessary to prevent an accident. Of course, after he saw that the boy's foot was caught he must do everything to stop the car. But I call your attention to the time before he could see that the boy's foot was caught and ask you to consider what it would have been prudent for him to do before that time, considering all the surrounding circumstances, considering the formation of this plank crossing, of this track and of this platform, and considering the fact, as the motorman says it was a fact, that children were frequently there running back and forth. Should he have anticipated that there might have been some kind of danger there, and should he have stopped his car or gotten it under control before he even saw any signal or waving or before he saw that the boy's foot was caught. Of course, after he saw that the boy's foot was caught it must be his duty to stop just as soon as he can in order to prevent the accident. I have no doubt he did that. But whether he discharged his whole duty towards these children, whom he admits having seen there before that time, is a question for the jury."

We are of the opinion that there was no error either in giving the one instruction or refusing the other. Under all of the facts and circumstances of the case it was proper to submit to the determination of the jury the question whether the motorman, who had ample time to do so after he first saw the children on or near the track, was not guilty of negligence in failing to get his car under such control that he could have stopped it in time to avoid running over the plaintiff after he actually saw that his foot had been caught between the board and the rail. City Pass. R. Co. v. Cooney, 87 Md. 266, 283; Welsh v. Jackson, 81 Mo. 466; Levington v. Wabash R. Co., 170 Mo. 452, 471; Holden v. Missouri, etc. R. Co., 76 S. W. Rep. 973 (Mo. 1903); Danville R. & E. Co. v. Hodnett, 101 Va. 361; Strutzel v. St. P. City R. R. Co., 47 Minn. 543, 545; Bray v. St. P. C. R. Co., 87 Minn. 280, 284; Forrestal v. M. E. R. & L. Co., 119 Wis. 495, 500; L. & N. R. R. Co. v. Van Arsdell (Ky. 1904), 77 S. W. Rep. 1103; Wallace v. City, etc. R. Co. (Oregon, 1894), 25 L. R. A. 663; and see Spooner v. D. L. & W. R. Co., 115 N. Y. 22, 33; O'Connor v. B. & L. R. Co., 135 Mass. 352, 356, 361.

The last question for consideration arises on an exception taken to the charge of the court instructing the jury in respect of the measure of damages, as follows:

"The jury are instructed that if they find a verdict for the plaintiff they should render a verdict in his favor for such a sum (not exceeding the amount claimed in the declaration) as in their judgment will reasonably compensate him for the pain resulting from the injury and from the loss of his leg; for the inconvenience to which he has been put and which he will be likely to be put during the remainder of his life in consequence of the loss of his leg; for the mental suffering, past and future, which the jury may find to be the natural and necessary consequence of the loss of his leg, and for such pecuniary loss as the direct result of the injury which the jury may find from the evidence that he is reasonably likely to sustain hereafter in consequence of his being deprived of one of his legs.

"You must exercise your own best judgment in regard to that. Of course you are limited by the declaration and can not exceed the amount claimed, $25,000. Of course that is not a suggestion to you that you should take that as a criterion to go by. That is only a limit, above which you can not go. It is not a suggestion that you should go to that amount. The question is simply: What is proper compensation to this boy for this injury, in case you find a verdict in his favor? What is proper compensation considering all the circumstances, the wound, the suffering, his probable length of life, the handicap he will sustain by reason of this wound during the remainder of his life—make an estimate as best you can on that subject."

Defendant asked no special instruction on this point and pointed out no specific objection to the charge given, but excepted thereto in general terms. The following special objections have been urged on the argument: (1) That the jury were told that if they found for the plaintiff their verdict should not exceed the amount claimed in the declaration; (2) that there was no evidence from which the jury could compute the pecuniary damage of the plaintiff due to the deprivation of the use of his leg throughout life; (3) that damages for this deprivation until plaintiff shall attain the age of 21 years accrue to his father and not to him; (4) that future mental suffering is not an element of damage.

As said before, the exception to the charge was general and not specific. And recurring to the assignment of errors we find but two of the objections now contended for pointed out therein. These are: (1) "The jury should not have been permitted to consider future mental suffering in enhancement of damages; (2) the jury should

Digitized by Google

not have been permitted to consider future pecuniary loss to the plaintiff by being deprived of the use of his leg."

Under these limitations in the assignment of error the first and third objections before stated pass out of consideration. However, they are of no practical importance under the circumstances. The expression in the first part of the charge relating to mental suffering in the future was part of an instruction that was good in general, and the language is substantially similar to that of a charge on the measure of damages that has been held good by the Supreme Court of the United States under a general exception. W. & G. R. R. v. Harmon, 147 U. S. 571, 573, 584; see, also, D. C. v. Moulton, 15 App. D. C. 363, 367, 379: 27 Wash. Law Rep. 753. Whether future mental anguish forms an element of damages for the consideration of the jury, save under peculiar conditions which may or may not be found in the case before us, is a question that we need not consider in the absence of a special instruction, or specific exception directing the attention of the trial court thereto. The rule is well settled that where an objectionable element is contained in a charge that is correct in general, and is not stated as an independent proposition, a general exception to the entire charge is not sufficient. T. & P. Ry. Co. v. Humble, 181 U. S. 57, 67; T. & P. Ry. Co. v. Cody, 166 U. S. 606, 616; B. & P. R. R. v. Mackey, 157 U. S. 71, 91, 92, and cases cited; De Forest v. U. S., 11 App. D. C. 458, 464: 26 Wash. Law Rep. 346; Ryan v. R. R. Co., 8 App. D. C. 542, 543: 24 Wash. Law Rep. 333. This rule of practice is directly applicable to the conditions here presented. The charge given was apparently adopted from that approved in W. & G. R. Co. v. Harmon, supra, and it does not appear from the language used that the court contemplated future mental anguish as an independent element of plaintiff's damages. Had special attention been called to this language before submission to the jury the ambiguity might have been corrected.

Assuming that the second point raised in the error as assigned may be available under the general exception, we are of the opinion that it is not well taken. Damages of the kind are clearly recoverable in the case of an adult. In such a case it is within the power of the plaintiff to introduce evidence of the ordinary earning capacity of the party at the time, but still there remains a large element of uncertainty which must be left to the sound discretion of the jury. In the case of an infant of the age of the plaintiff there can be no like evidence, but it is nevertheless clear that a similar damage must occur. Rosencranz v. Lindell Ry. Co., 108 Mo. 9, 17; Somitz v. St. L. I. M. & S. Ry. Co., 119 Mo. 256, 277; T. & P. Ry. Co. v. O'Donnell, 58 Tex. 27, 44. Evidence relating to the probable earnings of the infant plaintiff after attaining an age when he might reasonably be expected to undertake regular occupation or employment would necessarily consist of conjecture on the part of the witness. There is no ground for the introduction of evidence in the nature of expert testimony, and the ascertainment must be left to the common experience of the jury charged with the responsibility of returning a fair verdict under all the circumstances—a verdict that is at the same time subject to the approval or disapproval of the trial court. Any other rule would deny to all infants the recovery of any damages whatever on account of the diminution of future earning capacity which must necessarily result from the loss of a limb, and would work not only hardship, but injustice also. The consequential uncertainty of the computation of such damages, as is the case in that permitted for pain and suffering, should be borne by the wrongdoer rather than by the victim of his wrongdoing.

Finding no reversible error in the proceedings on the trial, the judgment will be affirmed with costs. It is so ordered.

Affirmed.

THE COLUMBIAN CORRESPONDENCE COLLEGE, APPELLANT,

v.

ROBERT J. WYNNE, POSTMASTER-GENERAL, ET AL.

SECOND-CLASS MAIL MATTER; INSTITUTIONS OF LEARNING; CORRESPONDENCE COLLEGE; REVOCATION OF CERTIFICATE.

1. An incorporated joint stock company, conducting a correspondence college for the gain and profit of its shareholders, is not an "institution of learning," within the meaning of the act of Congress of July 16, 1894, admitting the periodical publications of such institutions to the mails as second-class matter.
2. The fact that the act of 1894 was, at the time of its passage, construed by the Postmaster-General then in office, as conferring upon publishers, such as the correspondence college referred to, the right to mail their publications at second-class rates, does not prevent a succeeding Postmaster-General from revoking the certificate of admission to the mails as second-class matter on reaching the conclusion that the publication in question was not within the meaning of the act.

No. 1459. Decided March 7, 1905.

APPEAL by complainant from decree of the Supreme Court of the District of Columbia, in Equity, No. 23,583, dismissing a bill filed to enjoin the revocation of a certificate admitting a publication to the mails as second-class matter. Affirmed.

Mr. Charles A. Ray and *Mr. Arthur A. Birney* for the appellant.

Mr. H. H. Glassie for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a decree in equity of the Supreme Court of the District of Columbia dismissing the bill of complaint filed by the appellant seeking to enjoin the appellees, the defendants below, from revoking or canceling an existing certificate of entry entitling the appellant to mail at the pound rate as second-class matter its publication, "The Student at Home." The case was heard on bill and answer.

The appellant, the Columbian Correspondence College, is an educational organization incorporated under the general incorporation act of the State of West Virginia, and has its principal office or place of business in the city of Washington. It is a joint stock company

Digitized by Google

having a capital of $60,000, divided into shares of $10 each and with the privilege of increasing its capital stock to the sum of $100,000. Its method of instruction is what has become known as the correspondence method, which its name sufficiently defines. It has several thousand students enrolled as members of its various classes in law, normal, civil service, bookkeeping, and stenography, and literature and journalism. The publication is sent to such persons as have made written application to the corporation for its catalogues and for information regarding the scope and work of the corporation, and to such persons as having made such formal application, have not, on receipt of the first number of the paper mailed to them, enrolled themselves as students. The publication was originally admitted to the mails at the rate fixed by law for second-class matter July 31, 1899, and on the occasion of its change from a semi-monthly to a monthly publication it was again submitted for admission as second-class matter July 18, 1900, and duly admitted. The bill alleges, and the answer does not deny, that it is the intention of the Postmaster-General to revoke or cancel the certificate of entry upon the ground that the appellant is not a "regularly incorporated institution of learning" within the meaning of the act of July 16, 1894.

Two questions are presented by the assignment of errors, which allege in substance that the court below erred in holding that the appellant is not a regularly incorporated institution of learning within the meaning of the act of July 16, 1894, and that it is not entitled to transmit through the mails its publication at the second-class rate of postage.

1. Appellant's counsel states the first question to be:

"Is an incorporated joint stock company, conducting a correspondence college for the gain and profit of its shareholders, a 'regularly incorporated institution of learning' within the meaning of the act of July 16, 1894?"

The act of July 16, 1894, referred to, is:

"That from and after the passage of this act all periodical publications issued from a known place of publication at stated intervals and as frequently as four times a year by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons, or by a regularly incorporated institution of learning, or by or under the auspices of a trades union, and all publications of strictly professional, literary, historical, or scientific societies, including the bulletins issued by State boards of health, shall be admitted to the mails as second-class matter, and the postage thereon shall be the same as on other second-class matter, and no more: Provided, further, that such matter shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning, and shall be formed of printed paper sheets without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications."

This court, in Chicago Business College v. Payne, 20 App. D. C. 606; 30 Wash. Law Rep. 812, had occasion to pass upon the same question as the one here raised, and its conclusion was that a corporation similar to the appellant was not an institution of learning within the meaning of the act of Congress referred to. The reasons upon which its conclusion was based are fully set forth in the opinion of the court in that case and it would be a work of supererogation to restate them. We are asked, however, to review that decision in the light of the additional facts presented. We fail to find anything in the record which is sufficient to differentiate the cases so as to lead to a contrary decision in the one at bar. It is true the proceedings are different in form, the former one asking for a writ of mandamus to compel the Postmaster-General to admit a publication to the mails as second-class matter, while in the present case an injunction is sought to prevent that officer from canceling or revoking a certificate of entry of a publication to the mails as second-class matter. In our opinion the form of remedy does not affect the question at issue, and, if this court was correct in its interpretation of the statute, its decision should stand whether relief by injunction or by mandamus be sought. It is further argued that this court, in the prior case, should have passed upon the question of its jurisdiction to review the departmental action, and that until that question was decided it could not lawfully determine questions arising on the merits. We do not consider that there is anything in this contention which robs the decision in that case of its weight as an authority. Under the circumstances of that case this court was clearly justified in considering the merits. In Bates & Guild Co. v. Payne, 194 U. S. 106, 32 Wash. Law Rep. 297, involving an analogous question, it was aptly said:

"Upon this principle, and because we thought the question involved one of law rather than of fact, and one of great general importance, we have reviewed the action of the Postmaster-General in holding serial novels to be books rather than periodicals; but it is not intended to intimate that in every case hereafter arising the question whether a certain publication should be considered a book or a periodical shall be reviewed by this court. In such case the decision of the Postoffice Department, rendered in the exercise of a reasonable discretion, will be treated as conclusive."

The court below correctly ruled that the appellant was not a regularly incorporated institution of learning within the meaning of the act of July 16, 1894, and the question raised must be answered in the negative.

2. The second proposition is thus stated:

"Does the construction placed upon the statute in 1894 by the then Postmaster-General, after correspondence with the House of Representatives and an official declaration by that body, through its presiding officer, at the time of the passage of the bill, that the act would confer upon publishers in the position of complainant the privilege claimed, bind the present Postmaster-General, and require that he shall await legislative change before giving a different construction to the act?"

This question must also be answered in the negative under the authority of Houghton v.

Digitized by Google

Payne, 194 U. S. 88: 32 Wash. Law Rep. 313. The court there laid down a rule which we must follow in this case. It said:

"Great stress is laid by counsel upon the original interpretation of the term 'periodical,' as applied to these books, which it is said was continued without change under different administrations and by several successive Postmasters-General, and from 1879, the date of the passage of the act, until 1902, when the certificates granted by the former Postmasters-General were revoked by the defendant and a different classification made of the publications now in issue; that the attention of Congress was repeatedly called to the evils and to the large expense incurred by the Government by the admission of publications of this description to mail matter of the second class; that Congress seriously considered these representations, and committees made voluminous reports thereon, yet Congress persistently refused to change by legislation the ruling of the Postmasters-General in that regard." . . .

"The action of the Government consists merely in the revocation of a certificate or license admitting these publications as mail matter of the second class. No vested right having been created by such certificate, no contract can be said to be impaired by its revocation." . . .

"Contemporaneous construction is a rule of interpretation, but is not an absolute one. It does not preclude an inquiry by the courts as to the original correctness of such construction. A custom of the department, however long continued by successive officers, must yield to the positive language of the statute." . . .

"While it might well happen that by reason of the relative unimportance of the question when originally raised a too liberal construction might have been given to the word periodical, we can not think that if this question had been raised for the first time after second-class mail matter had obtained its present proportions, a like construction would have been given. Some consideration in connection with the revocation of these certificates may properly be accorded to the great expense occasioned by this interpretation, and the discrimination in favor of certain publishers and against others, to which allusion has already been made. We regard publications of the Riverside Literature Series as too clearly within the denomination of books to justify us in approving a classification of them as periodicals, notwithstanding the length of time such classification obtained."

Furthermore, it will be remembered that this case was heard and determined on the bill and answer and in the latter the defendants make this averment:

"That it was never expressly held or determined by any of their predecessors that any incorporated joint stock company engaged in the business of education, for the personal or pecuniary profit of the owners or stockholders thereof, was a 'regularly incorporated institution of learning' within the meaning of the act of July 16, 1894."

We find that there was no error in the court below. It follows that the decree appealed from must be affirmed with costs, and it is so ordered.

Affirmed.

Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, APPELLANT,

v.

J. EDWARD CHAPMAN.

LICENSE TAX; CONTRACTORS; PAYMENT TO ESCAPE PROSECUTION; RIGHT TO RECOVER.

1. A wholesale dealer in wood and coal is not liable to the license tax imposed by paragraph 46 of section 7 of the act of July 1, 1902, upon "building and other contractors," merely because he has a contract to furnish wood and coal in large quantities to the general and municipal governments; the term "other contractors," as used in said paragraph, is too vague and uncertain to be enforced.
2. Where such dealer was arrested and charged in the Police Court with doing business without a license, and to prevent prosecution pays said tax under protest, the payment can not be regarded as a voluntary one, and an action can be maintained by him against the District to recover the amount paid.

No. 1449. Decided February 21, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,825, in a case tried by the court without a jury, upon an agreed statement of facts. Affirmed.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the appellant.

Mr. F. S. K. Smith for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun in the justice's court by J. Edward Chapman against the District of Columbia to recover the sum of $25, paid by him under protest as a license tax for the pursuit of the business of a contractor. The case was appealed to the Supreme Court of the District, and judgment was therein rendered for the plaintiff. A jury having been waived, the case was submitted to the court upon an agreed statement of facts. From this it appears that the plaintiff was a wholesale and retail dealer in wood and coal in the city of Washington; that in the course of said business he has for some years furnished large quantities of wood and coal to the United States and the District of Columbia under contracts therefor; that in June, 1903, he was notified by the District authorities that he owed a license tax as a contractor; that he informed them that he had paid the tax upon his personal property, consisting of his stock in trade, horses, wagons, etc., and asked an opinion of their counsel upon his liability for a tax as a contractor; that in reply he was informed by the secretary to the commissioners in a letter that "the Police Court had placed a very broad and ambiguous construction upon the term, 'building and other contractors,' in the act of July 1, 1902, and the assessor's office has had considerable difficulty in determining who come within this category;" that on June 9, 1903, an information was filed in the Police Court, charging plaintiff with doing business without license under the act aforesaid, and on September 10, 1903, he was arrested and brought into the Police Court to answer said charge; that he was then informed by the prosecuting officer that he would

Digitized by Google

likely be fined under said charge, and to avoid the publicity and notoriety of a trial in the Police Court the plaintiff paid the said sum of $25 under protest; that he then immediately demanded a return of the said sum, which was refused.

Paragraph 46 of section 7 of the act of July 1, 1902, imposes an annual tax of $25 upon "building and other contractors," and in default of payment prescribes a penalty not exceeding $500, enforcible in the Police Court.

Clearly plaintiff is not a "building contractor," and whatever may be the liability of such a person, we agree with the trial court that this tax can not be enforced against him, as a wholesale dealer in wood and coal, simply because he had a contract to furnish the same in large quantities to the general and municipal governments for the year 1903. The term, "other contractors," is too vague and uncertain in its meaning. It leaves too much to the discretion of the assessor, who, as said in the secretary's letter, "has had considerable difficulty in determining who come within this category." The case is governed by a recent decision of this court, to which reference is made. Lockwood v. D. C., 33 Wash. Law Rep. 131.

The next question is whether the payment of the money was made under such circumstances as warrant an action for its recovery. We think that it was. It is well settled that a payment of a tax in order to prevent the seizure of one's property or the arrest and detention of one's person is compulsory. 2 Cooley Taxation (3 ed.), p. 1505; 2 Dillon Municip. Corp. (4 ed.), secs. 940, 942.

We do not think that the payment made to prevent prosecution after his arrest can be regarded as a voluntary one because he might have contested the validity of the tax in that proceeding. The conviction of the offense would ordinarily be attended with some mortification, and the penalty, aside from the cost of prosecution, might be far in excess of the amount of the tax. Moreover, there is no absolute right of appeal from the Police Court, the grant of a writ of error being a matter within the discretion of the justices of this court.

To escape those risks the plaintiff was clearly justified in paying the tax under protest, in order that he might test the right to exact it in a court of civil jurisdiction.

The judgment was right and will be affirmed with costs. It is so ordered.

Affirmed.

On a criminal prosecution it is error to instruct the jury that "the wicked flee when no man pursueth, but the innocent are as bold as a lion." Hickory v. U. S., 160 U. S. 408, 16 Sup. Ct. Rep. 327.

The jury are to hold the scales, but the court must determine upon the admissibility of everything that is to be cast into them. The eyes of the jury are exclusively confined to the beam; the eyes of the court to the scales; the court is to determine what the jury is to weigh, the jury are to pronounce what it does weigh. Jones v. Fulgham, 2 Murph., 6 N. C. 364, per Seawell, J.

Proceedings in bankruptcy do not abate upon the death of the alleged bankrupt, after the petition is filed and before adjudication. Matter of Spalding, 13 Am. B. R. 223.

A husband is liable for a winter bonnet which his wife has purchased on his credit, although she already has a winter hat, when it appears that such old hat was worn and faded and out of fashion and had been worn four winters, and it further appears that her husband had seen her wear the new hat without expressing disapprobation; and a husband is liable for a summer hat when his wife's old summer hat has been worn during the previous spring, summer and fall. Ogden v. Prentice, 33 Barb., N. Y. 160.

Under the new order of things, when a husband induces his wife "to enter into the business of keeping boarders, and promises to let her have all the proceeds, he is allowed to keep his promise if she keeps the boarders. It would seem that the law ought to tolerate him in being faithful to his word in such a matter, even though he has pledged it only to his wife." McNaught v. Anderson, 78 Ga. 499, 3 S. E. Rep. 668, 6 Am. St. Rep. 278, per Bleckley, C. J.

A Treatise on the Law of Notes,

Law of Notes.

Checks and Drafts, Irregular and Regular Commercial Paper, by J. S. McMASTER, Examiner New York State Bank Department. **Price, $3.50.** For Sale by

1684 **BRENTANO'S,** Cor. 11th and Pa. Ave. Northwest.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

George E. Fleming, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Eliza B. Anderson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of April, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. MARIA L. ANDERSON, SOPHIE C. ANDERSON, 1527 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,810. Administration. 15-3t

Digitized by Google

Legal Notices.

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick D. Sullivan,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. KATHERINE B. SULLIVAN, 428 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,644. Administration. 15-3t

I. S. Lyon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Joseph H. Aukward,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. GEORGE H. AUKWARD, 128 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,837. Administration. 15-3t

Albert Sillers and W. H. Green, Solicitors

In the Supreme Court of the District of Columbia.

William H. Ward vs. Mollie J. Ward and John Vaughn.
No. 25,076. Equity Docket No. 56.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of the adultery on the part of the defendant Mollie J. Ward with the corespondent John Vaughn. On motion of the complainant, it is this 5th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 15-3t

Hamilton & Colbert, Solicitors

In the Supeme Court of the District of Columbia.

Minnie Kensington v. Naomi Kensington, younger; Stephen Kensington, Priscilla Kensington, Henry Kensington, the younger; William Kensington, the younger, et al. No. 25,190. Equity Docket No. 56.

The object of this suit is to have sale made, under the provisions of section 100 of the Code, of house 406 Mass. ave. N. W., described as follows: Part of original lot one in square five hundred and seventeen, beginning for same on Mass. ave. 53 feet from northeast corner of said square; thence westwardly on Mass. ave. 18 feet; thence at right angles with said avenue 13 feet; thence south 34 feet to H street; thence east 18 feet 8 inches; thence north 21 feet; thence northeastwardly 20 feet to beginning. Also houses 616, 618, and 620 North Capitol street, described as follows: The south 7 feet front on North Capitol street of lot 38 by the full depth of said lot and all of lots 39, 40, and 41, in Joseph Cabot's subdivision in square 645, as per plat in liber U. K., folio 273, of the records in the office of the surveyor of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainant, it is, this 11th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-3t

Legal Notices.

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Anthony Hanlon,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. JOHN A. HEENAN, 1237 32d st. N. W.; ARTHUR SMALL, 2918 M st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,627. Administration. 15-3t

Emory H. Bagley, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re the Estate of Indridge Hearns, Deceased.
No. 12,414. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of Indridge Hearns, by James W. Hearns, the named executor in the said last will and testament, it is ordered this 10th day of April, 1905, that notice be and is hereby given to **Richard Hearns, James Hearns,** both residing somewhere in the State of Virginia; **Bernard Smith, Richard J. Smith, Sarah S. Murphy, John A. Crowner, Henry R. Crowner, Martha Crowner,** and **Sarah B. Smith,** all residing at some unknown address or addresses in the District of Columbia, and to all others concerned, to appear in said court **Monday, the 15th day of May, 1905, at 10 o'clock A. M.,** to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and the Evening Star newspaper once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 15-3t

Henry C. Stewart, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eleanor J. Cooper,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. JAMES M. GREEN, 1336 New York ave.; WM. E. TUTTLE, Westfield, N. J.; ARTHUR D. TUTTLE, Westfield, N. J. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,490. Administration. 15-3t

J. McD. Carrington, Solicitor

In the Supreme Court of the District of Columbia.

Mary Elizabeth Lane v. William Lane, Respondent; Florence Corbin, Corespondent. No. 23,876. Equity Docket No. 53.

The object of this suit is to obtain an absolute divorce on the ground of adultery, provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. On motion of the complainant, by James McDowell Carrington, her attorney, it is this 7th day of October, A. D. 1904, ordered that the corespondent, **Florence Corbin,** cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-3t

Digitized by Google

Legal Notices.

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William C. Dix**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. FRANK P. DAVIS, 1456 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,712. Administration. 15-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph W. Parish**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. EMILY E. PARISH, 217 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,677. Administration. 15-3t

J. Harry Smith, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James H. Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. MARGARET T. LEWIS, 927 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,830. Administration. 15-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Len For Moy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. HENRY M. KINGSLEY, 516 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,828. Administration. 15-3t

Jas. B. Archer, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Carrie Warren**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. LOUIS F. ZELTMAN, 1800 Orleans st., Balto., Md.; WILLIAM ZELTMAN, 1215 N. Chester st., Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,816. Administration. 15-3t

Legal Notices.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel L. Denty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. BENJ. F. LEIGHTON, C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,821. Adm. 15-3t

Thompson & Laskey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Volney Pursell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. ROSE PURSELL, 412 N. J. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,813. Administration. 15-3t

I. J. Costigan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Abbie B. Clark, Deceased.
No. 12,826. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, it is ordered this 7th day of April, A. D. 1905, that notice be and hereby is given to William E. Clark, of Dallas, Texas, and to all others concerned, to appear in said court on Wednesday, the 10th day of May, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia. William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer**, deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Digitized by Google

Legal Notices.

SECOND INSERTION.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph R. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. LOTTIE H. JOHNSON, 1804 Belmont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,796. Administration. 14-3t

Jos. A. Burkart, Attorney

In the Supreme Court of the District of Columbia,

Holding a Special Term for Probate Court Business.

In the Matter of the Estate of Charles B. Osborne, Deceased. Administration No. 10,241.

The administrator d. b. n. of the estate of Charles B. Osborne, deceased, having reported a sale for the sum of six thousand ($6,000) dollars of the following described real estate belonging to said estate: East twenty feet front on G street by a depth of eighty-five feet of lot number five in John Taylor's subdivision of part of square five hundred eighteen (518) in the city of Washington, in the District of Columbia, subject to a subsisting encumbrance thereon of five thousand ($5,000) dollars, it is this 5th day of April, 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the **5th day of May, 1905.** Provided a copy of this order be inserted in The Washington Law Reporter once in each of three successive weeks before said last named date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

F. G. Coldren, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Philander Lucas, Deceased.

No. 12,772. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederick A. Fenning, it is ordered this 4th day of April, A. D. 1905, that notice be and hereby is given to **the unknown heirs and next of kin of said Philander Lucas**, and to all others concerned, to appear in said court on **Tuesday, the 9th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Samuel Maddox, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Richard Goodhart**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of April, 1905. ELLMORE HARRISON GOODHART, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,064. Administration. 14-3t

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eliza M. Higley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,771. Admn. 14-3t

Herbert L. Franc, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George G. Bragunier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905. NELLIE C. BRAGUNIER, 17 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,822. Administration. 14-3t

C. G. Lee, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Addison B. Atkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905. ANNABEL LEE ATKINS, 1318 15th st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,801. Administration. 14-3t

R. B. Behrends, Attorney

Notice is Hereby Given That on the 4th day of April, 1905, a petition was filed in the Supreme Court of the District of Columbia, by the American Butterine Company, a corporation created and existing under the laws of the United States applicable to the District of Columbia, stating that the said company has abandoned the business of manufacturing and selling butterine, and that its present name is, therefore, inappropriate to the business which it intends to conduct in the future, namely, the dairy and ice business; that the stockholders of the company, at their annual meeting in January, 1905, resolved to change the company's name to Standard Dairy and Ice Company, and the prayer of said petition is for such change. AMERICAN BUTTERINE COMPANY, by G. Lloyd Magruder, President. 14-3t

E. H. Thomas, Solicitor

In the Supreme Court of the District of Columbia.

Calvin Pardee et al., Complainants, v. George W. Clark, Phebe W. Ross, Defendants. No. 25,243. Equity Docket No. ——.

The object of this suit is to obtain release of deed of trust recorded January 19, 1872, in the land records of the District of Columbia, in liber 664, folio 454, made by Jane R. Elliott to said George W. Clark, trustee, to secure said Phebe W. Ross $1,700, represented by notes, the last of which matured the 18th day of January, 1875. On motion of the complainants, it is, this 6th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 14-3t

Digitized by Google

Legal Notices.

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha Cutler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1905. CHARLES R. ROWZEE, 3024 15th st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,802. Administration. 14-3t

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George R. Chapman, Deceased.
No. 12,669. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John C. Norwood, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Harry Chapman**, Hoadly Postoffice, Agneville, Virginia; **Eliza Ann Jackson, nee Chapman**, Piscataway Postoffice, Prince George Co., Maryland; **George Chapman**, Washington, D. C.; **Harriet Chapman Carroll, Mary Chapman Carroll, Frances Ford, Arthur Ford, and William Ford**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Douglas M. Scott**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of April, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,063. Administration. 14-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hugh Masterson, Deceased.
No. 12,808. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non cum testamento annexa on said estate, by Alice E. Masterson, daughter of said deceased, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Joseph I. Masterson**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Legal Notices.

Nathl. Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Nathaniel Carusi**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 28th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of April, 1905. CATHARINE A. CARUSI, Administratrix, by Nathl. Wilson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,074. Administration. 14-3t

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Henry L. Hyman, Deceased.
No. 11,998. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by John B. Hyman, it is ordered this 5th day of April, A. D. 1905, that notice be and hereby is given to **Charles M. Hyman**, and to all others concerned, to appear in said court on **Friday, the 12th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

George E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline Day**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, formerly UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,825. Administration. 14-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Joseph J. Johnson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 25th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of April, 1905. JAMES T. HUNTER, 612 F st. N. W., Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,697. Administration. 14-3t

Digitized by Google

Legal Notices.

Chas. W. Boyle, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Francis B. Conner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. EDITH C. CONNER, 1106 I st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,814. Administration. 14-3t

In the Supreme Court of the District of Columbia.
Wm. H. Frey et al. vs. Elizabeth T. Frey et al.
Equity, 22,055.

Jesse H. Wilson and Levin S. Frey, trustees, having reported to the court an offer of twenty-seven hundred (2,700) dollars by Harry S. Welch, to be paid in cash on ratification of the sale, for lot fifty-one (51) and the south two (2) feet of lot fifty (50) by width thereof, in Marche's subdivision of square eight hundred and ninety-six (896), as per plat in the office of the surveyor, in liber 17, folio 43, it is this 4th day of April, 1905, ordered that said offer be accepted, and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **5th day of May, 1905. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 14-3t

Gordon & Gordon, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of William D. C. Murdock, Deceased. No. 9404. Administration Docket, 26.

William A. Gordon, administrator herein, having settled his accounts and made partial distribution of the funds in his hands, and having made application to the court to appoint a time and place for making full and final distribution of the balance remaining in his hands belonging to the estate of said William D. C. Murdock, it is this 31st day of March, 1905, ordered that notice be and it hereby is given to all persons having any claim to or interest in said fund, that the court has appointed **April the 28th, 1905, at 10 o'clock A. M.**, as the time and said court room as the place for making full and final payment and distribution of said fund remaining in his hands undistributed, when and where all persons interested in or entitled to the same are to attend. Provided a copy of this order be served on the next of kin of said decedent at least ten days before the appointed day and a copy of this order be published in The Washington Post and Evening Star and The Washington Law Reporter once in each of three successive weeks before said appointed day, the first publication to be not less than 20 days before said day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

H. W. Sohon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary Ellen French, Deceased.
No. 12,792. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William B. French, it is ordered, this 5th day of April, A. D. 1905, that notice be and hereby is given to **Peter Brady, Richard Brady, Henry Brady, Robert Brady, John Brady, Charles Brady, James Brady, and Margaret Brady**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Legal Notices

THIRD INSERTION.

C. W. Darr, Solicitor
In the Supreme Court of the District of Columbia.
Dudley T. Hassan v. The Union Investment Company of the District of Columbia et al.
Equity No. 24,692.

Upon consideration of the reports of Charles E. Roach and Charles W. Darr, receivers, filed herein, stating that they have sold the properties described in said reports and in these proceedings, as follows: The south one-half of lot numbered eleven (11) in square numbered ten hundred and eighteen (1018), to Adam A. Weschler for the sum of five hundred and thirty-four dollars and fifty cents ($534.50), and lots numbered seventy-three (73), seventy-four (74), and seventy-five (75), in A. M. McLachlen and Robinson White, trustees, etc., and T. H. G. Todd's subdivision of original lots in square numbered ten hundred and twenty-eight (1028), as recorded in the office of the surveyor of the District of Columbia in liber No. 17, folio 44, to Raymond J. Cooley for the sum of eighteen hundred dollars ($1,800.00), it is, by the court, this 27th day of March, A. D. 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **10th day of April, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 13-3t

Julius I. Peyser, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ernst Willner, Deceased.
No. 12,770. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth Willner, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to **unknown heirs at law and next of kin**, and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

Chas. H. Bauman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph Stump**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. CHARLES H. BAUMAN, 328 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. 13-3t

Turner & Mitchell, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Otto Broderson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. AMELIA BRODERSON, 689 Sheridan st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,455. Administration. 13-3t

Digitized by Google

Legal Notices.

Charles J. Murphy, Attorney
In the Supreme Court of the District of Columbia, Holding a Probate Court.
In the Matter of the Estate of Annie Partridge, Deceased. No. 12,767.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Charles J. Murphy, it is ordered this 23d day of March, A. D. 1905, that notice be and hereby is given to **Frederick Griffith and Belle Griffith, known in religion as Sister Marie of the Sacred Heart,** and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

John J. Hamilton, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.
Estate of Mary A. McGolrick, Deceased. No. 12,797. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton and Michael J. Colbert, it is ordered this 24th day of March, A. D. 1905, that notice be and hereby is given to **the unknown next of kin and the unknown heirs of Mary A. McGolrick,** and to all others concerned, to appear in said court on **Wednesday, the 3d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

Carlisle & Johnson, Attorneys
In the Supreme Court of the District of Columbia, Holding a Probate Court.
In Re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin. No. 10,117. Adm. Docket.

On consideration of the petition of Georgia Anne O'Neill, executrix, it is, by the court, this 29th day of March, A. D. 1905, ordered that the sale of lot twenty in Webb and Bradley, trustees', subdivision of square five hundred and twenty-eight, as per plat recorded in liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Kate Harbaugh, at and for the sum of thirty-five hundred dollars ($3,500) cash, subject to the payment to Moore and Hill of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed unless cause to the contrary be shown on or before **the first day of May, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-named day. WENDELL P. STAFFORD, Justice. A true copy. Test: JAMES TANNER, Register of Wills. 13-3t

Fulton Lewis, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of **Alberta Stewart,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of March, 1905. ALBERT STEWART, Administrator c. t. a., by Fulton Lewis, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,335. Adm. 13-3t

Legal Notices.

P. A. Bowen, Jr., Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary A. L. Carpenter,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. ARTHUR DUDLEY CARPENTER, The Highlands, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,794. Administration. 13-3t

Fred L. Rosemond, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.
Estate of Alice V. C. Williams, Deceased. No. 12,317. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles M. Campbell, it is ordered, this 29th day of March, A. D. 1905, that notice be and hereby is given to **E. J. Williams and Helen Williams,** and to all others concerned, to appear in said court on **Tuesday, the 2d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13-3t

Irwin B. Linton, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas J. Parker,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. THOMAS D. PARKER, 313 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,267. Administration. 13-3t

Gittings & Chamberlin, Attorneys
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Harriet Ann Butler,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1905. WALLACE McK. STOWELL, Lincoln Nat'l Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,689. Administration. 13-3t

Daniel W. O'Donoghue, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick I. Moran,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of March, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of March, 1905. MARY MORAN KELEHER, 3009 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,808. Administration. 13-3t

Digitized by Google

Legal Notices.

Eugene A. Jones, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of Estate of Patrick Curtin, Deceased.
Administration. No. 12,759.

ORDER OF PUBLICATION.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of the said deceased, and for letters testamentary on said estate, to Honorah Curtin, it is ordered this 23d day of March, 1905, that notice be and hereby is given to **John N. Curtin** and **James O'Hagan**, and to all others concerned, to appear in said court on the **1st day of May, 1905, at ten (10) o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three (3) successive weeks before the return date herein mentioned, the first publication to be not less than thirty (30) days before said return date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 13-3t

Robert S. Hume, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Laura Edith Barron**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of March, 1905. GEO. S. FINCH, 317 Queen st., Alex., Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,788. Administration. 13-3t

Stanton C. Peelle, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Altschuh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **27th day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1905. LOUIS P. ALTSCHU, 2007 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,798. Administration. 13-3t

FOURTH INSERTION.

Wolf & Rosenberg, Attorneys
In the Supreme Court of the District of Columbia.
Holding a Probate Court.
In re Estate of John Curtis, Deceased.
No. 11,974. Admr.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 24th day of September, 1900, purporting to be the last will and testament of John Curtis, deceased, has been returned as to Thomas E. Waggaman and Patrick Curtis "not to be found," it is, this 21st day of March, A. D. 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **18th day of April, 1905**, and that this order and a copy of the said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period of time in The Washington Times. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

ISSUES.

1st. Was the said John Curtis at the time of the alleged execution of the said paper writing dated September 24, 1900, of sound and disposing mind and capable of executing a valid deed or contract?

2d. Was the execution of said paper writing dated September 24, 1900, by John Curtis procured by undue influence or misrepresentation or artifice exercised upon or practiced against said John Curtis by any person or persons? 12-4t

Legal Notices.

Daniel W. O'Donoghue, Solicitor
In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.
mar. 10-17, apr. 7-14, may 12-19

SIXTH INSERTION.

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 16

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - APRIL 21, 1905

CONTENTS.

Editorial 241
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Charles S. Landram et al., executors, etc., et al., appellants, v. Gabriella K. Jordan 243
Mary E. Bunten, appellant, v. American Security and Trust Company 247
Joseph Naganab, appellant, v. E. A. Hitchcock, Secretary of the Interior 248
Legal Notices 251

Death of Gen. Halbert E. Paine.

Gen. Halbert E. Paine, one of the justices of the peace for the District of Columbia, died at his residence in this city on Friday, April 14, 1905. General Paine had a long and distinguished career in the service of his country, both in civil and military positions, and possessed the cordial respect and esteem of a wide circle of friends and acquaintances, including men prominent in public life in all sections of the country. His character, both professional and private, was of the highest type.

The death of General Paine reduces the number of justices of the peace for this District to nine. By an order of the Supreme Court of this District, in general term, subdistrict No. 7, in which Justice Paine presided, was annexed to subdistrict No. 1, and Justice Charles S. Bundy will try cases arising in both subdistricts. The Code provides, in section 2, that when the "number of such justices of the peace shall be reduced by death, resignation, or expiration of term of service, or otherwise, to six, the number of such justices of the peace shall be six only, and if the number shall not be reduced to six until the expiration of the term of the present justices of the peace only six vacancies shall then be filled." In another column will be found a pertinent communication from Justice Samuel R. Church, calling attention to this matter, and we shall be glad to give place in our columns for its further discussion.

THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Smoke Law; Apartment Houses Not Private Residences.

In Duehay v. District of Columbia the appeal was from a judgment of the Police Court convicting the plaintiff in error, as owner of an apartment house, of a violation of the law against the emission of dense smoke. It was contended on his behalf that an apartment house is to be considered a private residence within the meaning of the provision of the smoke law exempting private residences from its operation. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, denies this contention, holding the exemption to apply only to those houses that come within the general acceptation of the term "private residences," and explicitly declaring that it does not apply to apartment houses, tenement houses, or flats, wherein a number of private families may live in separate apartments, enjoying the benefits of boilers and furnaces attached to one or more great chimneys or smokestacks, and supplying heat and other conveniences for the common use. The judgment of the Police Court is therefore affirmed.

Contempt; Attempt to Influence Juror.

In McCaully v. United States, the appeal was from an order of the court below adjudging the appellant guilty of contempt of court and sentencing him to jail for six months. The specific charge against the appellant was that he had corruptly attempted to influence a juror summoned for the trial of a case in the criminal court. The proceeding was commenced by an information filed by Assistant United States Attorney Easby-Smith, and a rule to show cause was issued against McCaully, who first moved to quash the rule, and that motion being overruled, pleaded "not guilty." Testimony was taken, and Mr. Justice Wright, holding the criminal court, held him guilty of contempt and imposed sentence. It was contended for the appellant that the court was without jurisdiction to try him in a summary way without a jury, and also that the testimony was not sufficient to support the conviction. The Court of Appeals rules against the appellant on both contentions. In respect of the question of jurisdiction, the court holds that there is no possible difference between the corrupt solicitation of a jury in the court house and a precisely similar corrupt solicitation of a juror at his home or place of business. As to the sufficiency of the testimony, the court holds that, while at first

Digitized by Google

sight apparently meagre, it made a prima facie case against the appellant, which he made no effort to overcome. The judgment is affirmed in an opinion by Mr. Justice Morris.

Master and Servant; Risks of Employment.

In the case of Butler v. Frazee, the action was to recover damages for personal injuries. The plaintiff was employed in a steam laundry owned by the defendant, and had one of her hands caught and crushed in a machine at which she was working. The trial court directed a verdict for the defendant, upon which there was judgment. The Court of Appeals affirms this judgment, in an opinion by Mr. Chief Justice Shepard, holding that an employee must be deemed to have accepted the risk reasonably to be apprehended when he continues in the use of defective or unsafe appliances. This law, it is held, applies both where the employee has actual notice of the condition of the appliance and where, in the usual course of its use, the defect is open to ordinary observation.

Action on Judgment of Sister State; Jurisdiction; Notice.

In Karrick v. Wetmore, the appeal was specially allowed from an order of the court below sustaining a demurrer to defendant's plea. The action was brought upon a judgment of the Superior Court for the county of Suffolk, Massachusetts. The defendant filed two pleas, the general issue of nul tiel record, and a special plea setting up that the cause against him in Massachusetts was dismissed on June 12, 1899; that under the rules of the court the dismissal became final on the first Monday in July of that year; that the cause remained dismissed for more than five terms of the court, until October 18, 1900; that in the meantime, on April 29, 1899, defendant filed his petition in bankruptcy, in which the debt for which the suit was brought was scheduled, and received his discharge in bankruptcy on June 23, 1899; that subsequent to his discharge, and while the suit in Massachusetts stood dismissed, he inquired of the clerk of said superior court and was informed that the suit was no longer pending, and relying upon this statement he took no steps in that court to suggest his discharge in bankruptcy; that the suit was sought to be restored to the docket without summons, citation, or notice of any kind to defendant, and without his knowledge; and that the court was without jurisdiction to render the judgment. The plaintiff to the special plea and the demurrer was sustained. The Court of Appeals, in an opinion by Mr. Justice Morris, reverses this ruling, holding that the action of the said superior court in striking out the judgment of dismissal, and in rendering a new and radically different judgment against defendant without notice to him, was without jurisdiction and was null and void.

Street Extension; Order Confirming Award, Etc., Held Void and Properly Vacated.

In Macfarland et al. v. Saunders, the appeal was by the Commissioners of the District from an order of the court below sitting as a District court, setting aside an order previously made confirming a verdict, award, and assessment in the matter of the extension and widening of Sherman avenue. The Court of Appeals affirms the ruling of the court below, holding that the order vacated and set aside thereby was void because it was the absolute right of the appellee to have a new jury summoned, should he so elect, and he properly exercised his right and made known his desire by filing exceptions. The opinion cites and follows the previous decisions of the court in Brown v. Macfarland, — Wash. Law Rep. —, and other cases. Mr. Justice Duell delivered the opinion of the court.

Reduction in Number of Justices of the Peace.

Editor Washington Law Reporter:

Permit me through your columns to call attention to the reduction in the number of justices of the peace in the District of Columbia to six, which will take effect January 1 next.

The lamented death of Justice H. E. Paine has already reduced the number to nine, and compelled that part of the District, formerly "Georgetown," to seek its judicial remedies in justice's court before Mr. Justice Bundy, of subdistrict No. 1, on Fifth street, a long way to go for that purpose.

The opinion of the undersigned, based on eleven years' experience as a magistrate, is that six justices of the peace can not properly transact the steadily increasing business of these minor civil courts. It will be remembered that one, and sometimes two, of the six will be often sitting in the Police Court. In addition, a juvenile court is being urged, a good thing in itself, but meaning another assignment for the insufficient number of civil magistrates, if the juvenile court judge is ill or on vacation.

Add the summer vacations of the justices of the peace themselves, and the possibilities of illness, etc., and the proposed force of six magistrates will be utterly insufficient, and delays will arise which should never happen in these "poor men's courts" of speedy jurisdiction.

I venture to call attention to the matter, hoping that it may provoke discussion in the profession and the community, through your columns and elsewhere, in the hope that Congress will see the necessity of amendment before a congestion of business takes place.

Very respectfully yours,

Samuel R. Church.

Digitized by Google

Court of Appeals of the District of Columbia.

CHARLES S. LANDRAM ET AL., EXECUTORS, ETC., ET AL., APPELLANTS, v. GABRIELLA K. JORDAN.

EQUITY PRACTICE; SERVICE BY PUBLICATION; GENERAL APPEARANCE; BILL OF REVIEW; PARTIES; TRUSTS; PERPETUITIES.

1. Irregularity in obtaining an order for service by publication upon non-resident defendants is waived by their general appearance in answer thereto.
2. The right to file a bill of review held not lost by laches where the bill was filed and writs of subpœna regularly issued, and alias process also issued and served upon one of the necessary parties defendant, within two years after entry of the original decree, notwithstanding considerable delay ensued in procuring an order for service by publication upon defendants shown to be non-residents, where there is nothing to show that this delay was unreasonable or attributable to bad faith or operated to the prejudice of defendants.
3. Whether a party interested in the subject-matter of an original bill and yet omitted therefrom is a necessary party to review the decree rendered thereon, *quære*.
4. An objection that the widow of one of the heirs at law of a decedent whose will, so far as it affected real estate in this District, has been decreed invalid, is a necessary party to a bill to review the original decree, not raised by plea, answer, or on the face of the demurrer, but suggested for the first time on the hearing, held made too late—the widow not being an indispensable party and her rights not concluded by the decree entered on the bill of review.
5. Where an estate has been vested in trustees upon several independent trusts, one of which is legal, though the others may not be, the estate of the trustees will be upheld to the extent necessary to enable them to execute the valid trust, though avoided as to the others.
6. Testator, by item 5 of his will, devised real estate in this District upon trusts to continue until 1928. By item 6 the rents of one piece of property were directed to be paid to a niece during life, and should these not amount to $40 per month the trustees were to add thereto sufficient to make that amount. On death of the niece the fee simple title to said property to vest in a grandson, but if she died before January 1, 1928, the grandson to receive only the rents therefrom, etc. In a proceeding to construe the will, its provisions affecting lands in this District were held void as creating perpetuities, and that the property descended to his heirs at law. Upon a bill of review filed by the niece, held that the original decree was erroneous in so far as it affected the provision for her benefit, the trust for her benefit being separate and independent, and in no wise dependent for its validity upon the other provisions of the will.

No. 1476. Decided April 4, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,729, upon a bill filed to review the decree in Equity, No. 21,422, whereby certain provisions were held void as violating the rule against perpetuities. Affirmed. For opinion below see 32 Wash. Law Rep. 501.

Mr. John J. Hemphill, Mr. Thomas P. Woodard, and *Mr. W. Mosby Williams* for the appellants.

Mr. Frank W. Hackett and *Mr. Charles F. Wilson* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree of the Supreme Court of the District sustaining a bill of review filed on October 29, 1901, by Gabriella K. Jordan against Elijah S. Drake and Leroy M. Taylor, trustees under the will of Thomas Kearney, deceased; Constance K. Vertner and Lillie K. Vertner, Edmund K. Vertner and Thomas K. Vertner, to review a decree rendered by said court on June 27, 1900, on a bill filed by Elijah S. Drake, trustee, against Leroy M. Taylor, Constance K., Lillie K., Edmund K., Thomas K. Vertner, and Gabriella K. Jordan.

It appears from the bill and exhibits that Thomas Kearney died in San Antonio, Texas, leaving a will dated June 4, 1896, by which he undertook to dispose of a large estate consisting of lands and personal property in the State of Texas, of lands in Virginia, and certain improved and unimproved real estate in the District of Columbia. Executors were appointed for the administration of the estate in Texas, and two trustees, Drake and Taylor, were appointed with general powers, and particularly for the management and control of so much of the estate as was situated in Virginia and the District of Columbia.

The will is a very long and elaborate one, giving full power of possession, control, and so forth, to the trustees, with directions concerning rents, improving property, paying taxes, paying certain sums to testator's daughter and her children, and expressly directs that said possession and powers shall continue in said trustees and their successors until January 1, 1928.

The following items of the will only are of importance in the determination of this case:

"Item 6. I hereby authorize and direct that my said trustees shall during the natural life of my beloved niece, Gabriella K. Jordan, pay over to her regularly each month, as soon as collected, all rents and revenues collected or derived from that certain property described in the third item hereof as lot No. 611 'M' street N. W., Washington, D. C., but in case said rents and revenues shall at any time be less than the sum of forty dollars for any one or more months, then my said trustees are hereby authorized and instructed to add to the sum so collected a sufficient amount to make the said sum of forty dollars for each and every month; it being my desire that she shall have a regular income of at least forty dollars per month, and that the sum be paid over to her monthly; but if the income derived from said premises shall amount to a sum in excess of forty dollars per month, she shall have the whole thereof.

Item 7 contains directions concerning the lease and disposition of the income of all the real property in the District "except that derived from the house known as No. 611 M street, which shall be paid to my niece as provided in item 6 hereof."

"Item 8. It is my desire and my said trustees are hereby authorized and instructed that, upon the death of my said niece, Gabriella K. Jordan, the fee simple title to the house and lot, No. 611 M street, N. W., Washington, D. C., shall be and is hereby vested in my grand son, Thomas K. Vertner, provided, that should my said niece die before the 1st day of January, 1928, then in that event, said Thomas K. Vertner shall only receive the net rents and revenues derived by my trustees therefrom, and provided further that, should my said niece, die before my said grand son shall have attained the age of twenty-two years, then, from the date of the

Digitized by Google

death of my niece, until the said Thomas K. Vertner shall have arrived at the age of twenty-two years the rents and revenues derived from said lot shall be disposed of in the same manner as provided in item 7 hereof in regard to the rents and revenues derived from other property mentioned therein, except the vacant lot on Twentieth street, N. W.

"Item 20. It is my desire and my trustees are hereby instructed to keep all the houses herein entrusted to them insured and in repair; to keep all taxes due or to become due thereon paid, and in case of the destruction or injury of them or any of them, to rebuild or repair them in accordance with the instructions in item 17 hereof.

"Item 21. For fear that there may be some difficulty in construing the different provisions of this [will], relating to the moneys that may come into the hands of the trustees herein named, I desire to say that it is my intention that all the moneys arising from the rents of the Washington, D. C. property, except that which is to go to Gabriella K. Jordon, shall be placed in a common fund for the payment (1) of taxes, insurance and repairs on said property and of the premises at Luray, Virginia; (2) of (90) ninety dollars per month to my said daughter, Constance K. Vertner during her natural life; (3) for the support, education and maintenance of my said three Vertner grandchildren until Lillie K. Vertner shall have arrived at the age of nineteen years, and until Edmund K. and Thomas K. shall have arrived at the age of twenty-two years respectively."

Leroy M. Taylor declined to accept the trust. Elijah S. Drake accepted and undertook its execution for several years, during which, it is alleged, he paid the sum of $40 per month to Gabriella K. Jordan. On May 15, 1900, Drake filed a bill in the Supreme Court of the District of Columbia against Taylor, who, it was alleged, had declined to accept the trust, Constance K., Lillie K., Edmund K., and Thomas K. Vertner, and Gabriella K. Jordan. The bill sets out the will and alleges as the reason for filing the same, that: "Questions have arisen as to the validity of the provisions in the said will relating to the real estate within the District of Columbia, and your complainant is advised that the said provisions are void because they attempt to create a perpetuity."

The prayer is for the construction of the will.

Constance Vertner answered, alleging the invalidity of the will because it attempted to create a perpetuity. She also alleged that she and her brother, Edmund Kearney, were the sole heirs at law of the testator; that said Edmund Kearney died June 4, 1898, leaving a widow and no children, whereby defendant was his sole heir at law; and that Edmund Kearney left a will which was not so attested as to pass real estate in the District of Columbia. A guardian ad litem was appointed for the three infant defendants and filed a formal answer. Gabriella K. Jordan, who lived in New York, filed the following as her answer:

"This defendant being advised that the bill of complaint herein involves only questions of law as to the construction of a will, and as she is not advised as to the law governing such matters and things therein set forth she prays the court to make such a decree herein as will protect her rights in the premises and to this end admits the matters and things in the said bill of complaint to be true."

Neither she nor Constance Vertner were represented by counsel, and it would seem that it was regarded by the court as a mere friendly proceeding. On June 27, 1900, the decree which is now sought to be reviewed was entered as follows:

"This cause having been calendared, was submitted on the pleadings filed therein and duly considered, it is, by the court, this 27th day of June, 1900, adjudged, ordered, and decreed that the provisions of the last will and testament of Thomas Kearney, deceased, so far as the same devise or attempt to dispose of lands and tenements lying and being within the District of Columbia, are deemed and held to be in violation of the provisions of law prohibiting the creation of perpetuities and contrary to the statute in such cases made and provided; and it is further adjudged, ordered, and decreed that said provisions of said will are deemed and held to be void and of no effect and that as to the said land and premises the said Thomas Kearney died intestate and the same descended to his heirs at law."

On October 29, 1901, subpœna on this bill of review was issued to all of the defendants and returned "Not to be found." April 7, 1902, alias subpœna was issued to all and returned "Summoned Leroy M. Taylor personally April 7, 1902, Aulick Palmer, marshal. No copies for other defendants." April 17, 1903, an order of publication was passed for all defendants except Taylor, and proof of publication was filed September 25, 1903.

Constance K. Vertner, Lillie K. Vertner, and Elijah S. Drake entered demurrers on November 5, 1903, on the ground that the bill stated no case for relief. The death of Constance K. Vertner, testate, was suggested on July 7, 1904, and on the same day her executors, Charles S. Landram and John A. Broaddus, were made parties defendant.

On July 8, 1904, the demurrers were overruled, and the defendants electing not to answer, a final decree was entered modifying the decree in the original suit, "in so far as it relates to the provisions of said will in regard to the devise of the annuity or legacy to the complainant Gabriella K. Jordan, which provisions are hereby decreed to be valid; and it is further ordered, adjudged, and decreed that the said annuity for the full term of her natural life bequeathed to Gabriella K. Jordan, by the said last will and testament of said Thomas Kearney is a valid claim of rent-charge primarily against all rents and revenues collected or derived from lot No. 611 M street N. W., Washington, D. C., and secondarily against his entire estate for any balance of $40 per month that said rents and revenues may not yield, from the date when said legacy or annuity became due and payable, for any amount of principal or interest which may be due to said annuitant or legatee thereon." The decree further reserves the right to the complainant to apply for any further orders and decrees in the future that may be necessary and proper to carry the decree into effect. Landram and Broaddus, executors, Lillie

Digitized by Google

K. Vertner and Elijah S. Drake obtained a severance and perfected an appeal from said decree to this court. No appeal was taken on behalf of the infant defendants, but counsel have appeared on their behalf and made common cause with the appellants.

1. The contention that "the court erred in holding that the substituted service on the absent defendants, except Drake, by publication was valid, and that they were properly before the court for the purpose of making the decree that was entered," is without foundation.

It does not appear in the record that any such question was raised or ruled upon in the trial court. The parties appeared in answer to the publication of notice and made no objection thereto. The irregularity, if any, in obtaining the order of publication was waived by their general appearance.

2. There was no error in overruling the objection, presented on the hearing of the demurrer, that the complainants' right to maintain the bill of review had been lost by laches.

The bill was filed and writs of subpœna regularly issued thereon within the two years from the entry of the decree required by equity rule 88 of the Supreme Court of the District of Columbia. Alias process was also issued before the expiration of the two years, and served upon Taylor, one of the necessary parties in the District. Others were not found. The suit was thus commenced within any construction that may be given to common law rule 6, which applies to suits in equity also, and prosecuted in accordance with the provisions of equity rules 7 and 11. See Huysman v. Newspaper Co., 12 App. D. C. 586, 594: 26 Wash. Law Rep. 372.

It is true that there was considerable delay in prosecuting the notice by publication to the defendants shown to be non-residents. But there is nothing to show that this was unreasonable or attributable to bad faith. Webb v. Pell, 1 Paige Ch. 564; Fairbanks v. Farwell, 141 Ill. 354, 368.

Nor does it appear that any prejudice has been caused the defendants by the delay, and there is no question of intervening rights accruing during the interval.

3. The third error that has been assigned is founded on the refusal of the court to sustain the appellants' objection that Mary B. Kearney was a necessary party to the proceeding.

It is essential in a bill of review that all of the parties to the decree and their privies shall be made parties either plaintiff or defendant. Bank v. White, 8 Pet. 262, 268. And it appears that this requirement was complied with.

The objection is that Mary B. Kearney, the widow of Edmund Kearney, should have been made a party also because, since the decree annulling the will a right of dower has accrued to her in the lands in the District of Columbia to the extent of the interest of her deceased husband, Edmund Kearney, as one of the heirs at law of Thomas Kearney, deceased.

The objection that she was a necessary party was not raised by plea, answer, or on the face of the demurrer, but by suggestion on the hearing founded solely on the fact recited in the answer of Constance K. Vertner to the original bill filed May 15, 1900, that Edmund Kearney died June 4, 1898, leaving a widow, Mary B. Kearney, and no descendants. No request was then urged that she be made a party to the suit, and the cause proceeded to final decree without her. It is to be remarked also that there is nothing to show that she was living at the time that the bill of review was filed.

But passing by the question whether a party interested in the subject-matter of the original bill and yet omitted therefrom can be considered a necessary party to review the decree rendered thereon, and assuming that Mary B. Kearney is still living, her interest is a contingent one and not so inseparably connected with the claim of the parties to the suit as to make her an indispensable party to this proceeding. Indispensable parties are said to be "persons who not only have an interest in the controversy, but an interest of such a nature that a final decree can not be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." Shields v. Barrow, 17 How. 130, 139; see, also, Story v. Livingston, 13 Pet. 359, 375; Barney v. Baltimore, 6 Wall. 280, 284; Williams v. Bankhead, 19 Wall. 563, 571.

We are of the opinion, therefore, that the objection made on the hearing came too late. Weightman v. Critic Co., 4 App. D. C. 136, 153: 22 Wash. Law Rep. 835, and cases cited. In one of the cases there cited it was said:

"It ought to be observed here, preliminarily, as a matter of practice, that although an objection for want of proper parties may be taken at the hearing, yet the objection ought not to prevail upon the final hearing upon appeal, except in very strong cases, and when the court perceives that a necessary and indispensable party is wanting. The objection should be taken at an earlier stage in the proceeding, by which great delay and expense would be avoided. The general rule as to parties undoubtedly is that when a bill is brought for relief all persons materially interested in the subject of the suit ought to be made parties, either as plaintiffs or defendants, in order to prevent a multiplicity of suits, and that there be a complete and final decree between all parties interested. But this is a rule established for the convenient administration of justice, and is subject to many exceptions, and is more or less a matter of discretion in the court, and ought to be restricted to parties whose interest is involved in the issue and to be affected by the decree. The relief granted will always be modified so as not to affect the interests of others." Mechanics Bank v. Seton, 1 Pet. 299, 306.

Whatever interest Mary B. Kearney may have is not concluded by the decree rendered herein, and may be asserted by her hereafter if desired.

4. Having disposed of the foregoing preliminary questions, we come now to the consideration of the merits of the case as presented in the bill. In this we do not find it necessary, or that it would serve any useful purpose, to accept the invitation of counsel and enter upon the consideration of the question whether the general trusts created by the will of Thomas Kearney, as decreed on the original bill, are in fact void because in violation of the rule against

Digitized by Google

perpetuities. In the view that we have taken of the complainant's case, she has no direct interest in that question which renders its determination necessary, or even proper, under the circumstances. All of the parties whose interests were directly and materially affected by that part of the decree have not only acquiesced in it, but have appeared in this court also in its support.

By the terms of her bill the complainant limits her right of review to so much of that decree only as undertakes to annul the trust for her benefit in lot 611 M street N. W., and in so far as it may affect her contingent right to a monthly income of $40 during life, to be made up from the revenues of other property in the District of Columbia, in the event that the revenues of said lot shall fall short of realizing that sum.

Upon the assumption, then, of the correctness of the original decree, in so far as it declared void the several trusts of the will for the benefit of testator's daughter and grandchildren because violative of the rule against perpetuities, the contention is that the trust in favor of Gabriella K. Jordan, contained in item 6 of the will, necessarily fails with the others.

This result depends upon the inseparability of the special intention expressed in item 6 from the general intention expressed throughout in respect of the disposition of the great body of a large estate.

Undoubtedly, if it shall appear that the intention to create a trust for the life of Gabriella K. Jordan is so involved in the general scheme of the whole will as to be dependent upon it, and not capable of enforcement without doing violence to the general intention of the testator, it must fail along with the remainder of the will. Fosdick v. Fosdick, 6 Allen, 41, 48; Thorndike v. Loring, 15 Gray, 391, 398; Lovering v. Worthington, 106 Mass. 86, 88; Amory v. Lord, 9 N. Y. 403; Knox v. Jones, 47 N. Y. 389, 398.

On the other hand, a trust for general purposes may be void because unauthorized by law without necessarily rendering void a particular trust in the same will made to subserve another purpose that is authorized. Savage v. Burnham, 17 N. Y. 561, 576. And it is a rule, founded in reason as well as supported by authority, that if under settled principles of law effect can not be given to an entire will or to certain entire provisions thereof, any provision may nevertheless be given effect which is conformable to those principles, and which can be separated from the residue without doing violence to the testator's general intention. In other words, where an estate has been vested in trustees upon several independent trusts, one of which is legal though others may not be, the estate of the trustees will be upheld to the extent necessary to enable them to execute the valid trust though avoided as to the others. Oxley v. Lane, 35 N. Y. 340, 349; Van Schuyver v. Malford, 59 N. Y. 426, 432; Tiers v. Tiers, 98 N. Y. 568, 572; Burnes v. Allen, 89 Hun, 552, 558; S. C. affirmed, 154 N. Y. 741; Loring v. Blake, 98 Mass. 253, 262; Lovering v. Worthington, 106 Mass. 86, 88; Graham v. Whittridge (Md. 1904), 57 Atl. Rep. 609.

Tested by these principles, we are of the opinion that the trust created for the benefit of Gabriella K. Jordan in item 6 of the will of Thomas Kearney is a valid one and may be executed without regard to the failure of the remaining trusts for the benefit of other objects of the testator's bounty, and that it was manifest error to declare that provision of the will void along with the others, as was done in the original decree. In that provision (item 6) the testator expresses a particular and independent intention to provide an income for Gabriella K. Jordan during her life and expressly separates lot No. 611 M street N. W. from the residue of his estate in order to effect that intention. This intention to separate that lot from the rest of the estate is further shown in the special exceptions contained in items 7 and 20, before mentioned. Moreover, item 8 provides that upon the death of the life beneficiary, Gabriella K. Jordan, "the fee simple title to the house and lot No. 611 M street N. W. shall be and is hereby vested in my grandson, Thomas K. Vertner." This is followed by the words "provided my said niece die before the 1st day of January, 1928, then and in that event said Thomas K. Vertner shall only receive the net rents and revenues derived by my trustees therefrom, and provided further, that should my said niece die before my said grandson shall have attained the age of twenty-two years, then from the date of the death of my niece until the said Thomas K. Vertner shall have arrived at the age of twenty-two years the rents and revenues derived from said lot shall be disposed of in the same manner as provided in item 7 hereof in regard to the rents and revenues derived from other property mentioned therein," etc.

The first clause of item 8, before quoted, vests a remainder in fee in said lot in the grandson Thomas K. Vertner, to come into possession and enjoyment upon the termination of the trust for life for the benefit of Gabriella K. Jordan created by item 6. Richardson v. Penicks, 1 App. D. C. 261, 264: 21 Wash. Law Rep. 707, and cases cited. Conceding, as in the case of the general trusts, that the attempt in the foregoing provisos to postpone the enjoyment of the estate of the grandson may be in contravention of the rule against perpetuities, the result is the avoidance of their restraints without affecting the devise of the remainder. Neither the devise of the equitable life estate of the niece nor the remainder in fee can be rendered void by an unlawful attempt to postpone the enjoyment or restrain the alienation of the fee. Leonard v. Burr, 18 N. Y. 96, 106; Goldsborough v. Martin, 41 Md. 488, 502, 503; Lovering v. Worthington, 106 Mass. 86, 88; 2 Perry on Trusts, sec. 622; Saunders v. Vautier, 4 Beav. 115; Curtis v. Luken, 5 Beav. 147, 155. Our conclusion is, therefore, that the provisions of the will relating to Gabriella K. Jordan are separable from and independent of the others, and should have been upheld in the original decree.

The learned justice presiding in the equity court was right in the decree rendered by him modifying the original decree to that extent. If it shall become necessary, the court may, under its general equity jurisdiction, appoint another trustee, for the purpose of giving effect to the execution of the trust, and there is nothing to prevent the complainant from pursuing some

Digitized by Google

appropriate proceeding to enforce the payment of the arrears of the revenues to which she is entitled.

5. We have also been asked, on behalf of the appellee, to vacate the original decree on the ground of a want of jurisdiction of the court to entertain the bill filed by the trustee for the purpose of annulling the entire will under the pretense of seeking a construction of the trusts created thereby. The suit was, indeed, an extraordinary one, and the manner in which it was prosecuted to a final decree vacating each and all of the trusts would seem to warrant the inference, to some extent, that such was the real object sought. But for the reasons given for not passing upon the validity of the will as a whole, we regard it as unimportant to determine any other question than that in which the interests of the complainant are necessarily involved.

For the reasons heretofore given the decree will be affirmed, with costs, and it is so ordered.

Affirmed.

MARY E. BUNTEN, APPELLANT,
v.
AMERICAN SECURITY AND TRUST COMPANY.

DEED; DELIVERY; FAILURE TO RECORD; REVOCATION OF DEED; EJECTMENT.

1. Record of a deed is not essential to delivery, even though it be withheld from record by agreement of the parties.
2. The owner of real estate executed a deed conveying the property to a trust company, in fee, as trustee. The deed provided that the grantor, and her assigns, during her natural life, were to have the use, rents, and profits of the land, and that the trustee, upon her written request, should convey the property in fee, the proceeds to be used by the trustee to purchase other land to be held upon like trusts, and upon the death of the grantor the trustee should apply the property as provided in the deed. It was agreed that the deed should not be placed on record until after the death of the grantor unless she should so direct. The trust was accepted by the trustee. Subsequently the grantor notified the trustee that she wished to and did revoke the trust, and asked for the cancellation of the deed, to which the trust company replied that in its opinion it was without authority to cancel the trust, the beneficiary having acquired certain vested rights, and a method was suggested by which she might accomplish her purpose, but its suggestion was not adopted. Thereafter the grantor made a will devising the property in trust. In an action of ejectment by the devisee under the will, held that the delivery of the deed to the trust company was effectual to vest the legal title in it, and the equitable title in the beneficiary of the trust, leaving no title in the grantor at her death to be disposed of by the will.

No. 1484. Decided March 21, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,832, in favor of defendant in an action of ejectment tried by the court without a jury. Affirmed.

Mr. B. F. Leighton for the appellant.

Mr. W. D. Davidge for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment in favor of the defendant appellee entered in an ejectment suit. The general issue was pleaded, issue joined thereon, and the case tried by the court, a jury having been waived by written stipulation signed by both parties.

The record discloses that one Harriet Patience Dame, an unmarried woman, on June 18, 1892, being in possession of certain real estate situate in the District of Columbia, and known as lot 43 of Lanier Heights, executed and left with the defendant a deed conveying said lot in fee simple, to it, as trustee. The deed provided that the grantor, and her assigns, during her natural life were to be permitted to use, occupy, and enjoy, and have the rents, issues, and profits of the land and premises; and further that the grantee, upon the written request of the grantor, should convey the premises in fee simple to such person or persons as she might designate in writing, and that the proceeds received therefrom, less proper costs and charges, should be used by the trustee to purchase such other real estate as might be designated by her in writing, the substituted real estate to be held upon the same trusts as the original lot; the power to sell and reinvest, under like conditions, being made continuous; and upon the death of the grantor the real estate so vested in the trustee was thereafter to be held by the trustee to apply, use and dispose of as provided by the deed of trust. It is unnecessary to set forth the uses to which the trust estate was to be put, or under whose directions it was to be, as the validity of the trusts and the administration thereof are not here in question, nor could they be in this proceeding which is a suit at law and not one in equity. Contemporaneously with the execution of the deed the parties to it executed an agreement in writing, which, after referring to the conveyance of the lot to the trustee by virtue of the deed, and to a request for its acceptance by the trustee, and in consideration of its consent so to do upon the execution of the agreement, recites that the grantor is to pay all taxes, costs, and charges which might be levied against the lot, or any substituted real estate. Provision was also made for the compensation of the trustee. It was also provided that the deed should not be placed on record in the office of the recorder of deeds until the death of the grantor unless she gave written directions that it be recorded.

Some five years after the execution and delivery of the deed and agreement the grantor wrote a letter to the trustee stating that she had conditionally conveyed the property to it; that she understood the trust had not taken effect, and that she wished to revoke it and thereby she did revoke it and asked for the cancellation of the two instruments and for their return to her.

To this letter the trustee, by its attorney, replied that after a careful reading of the deed and agreement it was of the opinion that it was without authority to cancel or annul the trust; that both instruments were deliberately executed and delivered to it for the uses intended, and that the trust had been duly accepted; that the diocese of the cathedral (the cestui que trust) had become vested with certain rights which it could not destroy and might be held answerable for. It was suggested that if she told the bishop of her desire to revoke the trust he might find some way to accomplish her

Digitized by Google

desire. It does not appear that she acted upon this advice or made any further attempt to revoke the trust, though she lived for some three years thereafter.

On April 21, 1900, she executed a will which, after her death, occurring three days later, was duly admitted to probate in Merrimac county, New Hampshire. By this will, which was in proper form to vest title to real estate situate in the District of Columbia, she devised to the plaintiff, in trust, certain property, including the lot in question.

These facts present for our consideration the single question whether the deed to defendant was delivered in her lifetime so as to be effective and leave nothing for her to devise to plaintiff. The court below having answered this question in the affirmative, such decision is assigned as error.

In arriving at a conclusion it is necessary to construe the deed in the light of the agreement executed cotemporaneously. So considering them it is clear that the intent of the parties was that there should be and was a delivery of the deed to the trustee and its acceptance by it, and there was no valid revocation of the trust by the grantor. Her letter to the trustee, in the light of the answer made to it, can not be held to amount to anything. We do not think that it was in her power to withdraw the property from the operation of the trust in any such way. It is urged on behalf of the appellant that Miss Dame could have defeated the trust by the substitution of valueless property under what may be termed the substitution clause of the deed. It is idle to consider this for the very good reason that she never exercised the reserved right to substitute. The legal title to the lot became vested in the trustee by the execution and delivery of the deed June 18, 1892, and so remained in it up to and at the time of the death of the grantor, notwithstanding the fact that the beneficiaries and the trustee had no beneficial interest therein during her lifetime. It is further insisted that because the grantor provided in the agreement that the deed should not be recorded in her lifetime without her written consent it was her intention that there should be no delivery of the deed, and that failure to permit the record of the deed during her lifetime may be considered as proof of nondelivery. We think not. The delivery of a deed as between the parties is in no way affected by a failure to record it. Record of a deed is not essential to delivery, even though it be withheld from record by agreement of the parties. Fitzgerald v. Wynne, 1 App. D. C. 107: 21 Wash. Law. Rep. 611. In our opinion the agreement to withhold the deed from record during the lifetime of the grantor was not intended to and in no way made it a contingent conveyance.

The court below very clearly set forth the relations to and rights in the property in question when it said:

"Inasmuch as the will could not take effect until the death of the testatrix, and inasmuch as the devisee in the will must be treated as a volunteer, or one who takes property as a gift without consideration; and as the legal title to the defendant, and the equitable title and estate to the officers of the church, passed on the execution of the deed (the latter, however, to begin immediately on the death of the life tenant), there was no title left in the grantor to this property to be disposed of by her will."

The judgment will be affirmed with costs, and it is so ordered.

Affirmed.

JOSEPH NAGANAB, APPELLANT,

v.

ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR.

STATUTES; INDIAN TRIBES; POWER OF CONGRESS OVER TRIBAL PROPERTY.

1. In construing a statute every possible presumption is in favor of its validity, and this continues until the contrary is shown beyond a rational doubt.
2. The Indians are wards of the nation and the authority to deal with property, set aside for them by agreement with them or otherwise, is vested in Congress.
3. A decree dismissing, upon demurrer, a bill in equity to enjoin the Secretary of the Interior from carrying into effect certain provisions of the act of Congress of June 27, 1902, amending "An act for the relief and civilization of the Chippewa Indians," etc., affirmed.

No. 1465. Decided March, 1905.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,330, dismissing a bill for an injunction. Affirmed.

Mr. Tracy L. Jeffords for the appellant.

Mr. F. L. Campbell and *Mr. W. C. Pollock* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal was taken from a decree in equity wherein the court below, after hearing the case upon the bill of complaint and demurrer thereto, refused to enjoin the appellee from carrying out certain provisions of the act of Congress of June 27, 1902, entitled, "An act to amend an act entitled an act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and also refusing to require the appellee to complete the execution of an alleged trust and make an account thereunder, as set forth in an act of Congress approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota."

The facts material to a decision herein, as they appear by the bill and the voluminous exhibits referred to in or made a part of the bill, are substantially these:

Appellant, a chief of one of the bands or tribes of Chippewa Indians, being a citizen of the United States, brings the suit for his own benefit and for that of all other members of the tribes or bands of the Chippewas. No express authority to act for parties other than himself is shown by the bill. The ground of the suit is the claimed unconstitutionality of the act of June 27, 1902.

The Chippewa Indians at one time claimed a right to a large section of country under what has been termed the "ordinary Indian right," and defined to be simply the right of occupancy, the fee remaining in the United States. The complainant and the band of Indians to which he belongs resided in the State of Minnesota, and kept up and maintained their tribal

Digitized by Google

and band relations as Indian bands and tribes, and occupied certain lands and reservations in the State at the time of the passage of the act of Congress of January 14, 1889. Negotiations with the Chippewa Indians under said act resulted in the acceptance and ratification of said act by the Chippewa Indians, and their cessation and relinquishment and conveyance to the United States of all their right, title, and interest in the reservation mentioned in said act. Copies of the agreement relating to said conveyances are made a part of the bill. It was provided by the act of 1889 that to complete the extinguishment of the right and title of the said bands and tribes to the said lands that the conveyances thereof should be approved by the President of the United States. In due time, and after due consideration, the President approved the agreements and notified the Senate and House of Representatives of such approval, as shown by a copy of his message, which is made a part of the bill. By these acts the Chippewa Indians conveyed to the United States of America their right to upwards of 3,555,771 acres, constituting the various reservations. These lands so conveyed were held by the United States in trust for the purpose and upon the conditions stated and expressed in said act. Pursuant to the provisions of the act, the Secretary of the Interior proceeded to examine and classify the lands and approximately 1,500,000 acres thereof were classified as pine lands and 1,855,000 acres were classified as agricultural lands; 600,000 acres of land classified as pine lands were situated in the section known as the reservations of the Chippewas of the Mississippi, Leech Lake, Cass Lake, and Lake Winibigoshish. Upon the last-mentioned land there was standing and growing a large amount of merchantable pine timber alleged to be of the value of $10,000,000. The land classified as agricultural land, which was to be sold at $1.25 per acre, was valued at $2,318,750.

The terms and conditions of the trust which complainant insists the Chippewa Indians have the right to have completely executed arise out of the provisions of the act which provides among other things for the sale of certain of the lands and payment into the Treasury of the United States of the proceeds thereof. The sums so received to draw interest at the rate of 5 per centum per annum payable annually for fifty years, and the interest moneys were to be expended for the benefit of all the Chippewa Indians in the State of Minnesota, as set forth in the act. At the expiration of the fifty years the principal sum, less any amount advanced for the purpose of promoting civilization and self-support among said Indians, was to be paid to them.

It is further alleged that when the act of Congress of June 27, 1902, became a law the trust was only partially executed, as only part of the agricultural and pine lands had been disposed of under the act of January 14, 1889, there remaining undisposed of some 600,000 acres of pine land and some 200,000 acres of agricultural land, the former being alleged to be worth $1.25 an acre. The bill further alleges that without the consent of the Chippewa Indians of Minnesota, or any of them, and in derogation of their rights and in contravention of the terms of the trust, the act of 1902 in question was passed, and it provided, among other things, for the setting aside of a part of the pine lands then unsold as a perpetual forest reserve and for restricting the sale of the remaining timber on the reservations, so as to make the same of no value to the Indians; that the value of the lands already actually set aside or authorized to be set aside by the Secretary of the Interior as a perpetual forest reserve are of the value of at least $3,000,000; that the Secretary of the Interior has prescribed rules and regulations for the cutting of timber upon many acres of pine land adjoining the portion set aside for a forest reserve, and that the carrying out of said rules and regulations will reduce the saleable value of such pine timber more than $1,000,000, which sum will be taken out of the trust fund and it will be diminished thereby to that extent. It is alleged that the act is in violation of the trust contained in the act of 1889 under which the lands were conveyed to the United States; that the act is in violation of the trust and in direct conflict and violation of Article V of the Constitution of the United States in that it deprives the complainant and each and all of the Chippewa Indians of the State of Minnesota of their property without compensation and without due process of law, and the said last-mentioned act is unconstitutional and absolutely void.

To the bill of complaint the appellee interposed a demurrer setting forth these grounds:

"1. That there is a defect of parties complainant.

"2. That the bill is bad in substance, in that it does not set out any facts sufficient to entitle the complainant or the real party in interest, the Chippewa Indians of Minnesota, to the relief prayed for or to any relief.

"3. That the court has no jurisdiction over the subject-matter of the suit."

Admitting all the facts set forth in the complaint, which are well and sufficiently pleaded, to be true, and remembering that any allegations as to the construction of the statutes or documentary exhibits referred to therein are not admitted by the demurrer to be correctly alleged, being a matter of law for the determination of the court, we are called upon to examine the case as presented by the pleadings and see whether anything is presented that differentiates this from other similar cases that have heretofore been decided adversely to the contentions of the appellant.

We are met at the very outset by authoritative decisions of the court of last resort laying down a general rule by which the courts are to be governed when they are asked to declare an act of Congress unconstitutional and enjoin the executive officers from administering it. As has been said, "every possible presumption is in favor of the validity of the statute, and this continues until the contrary is shown beyond a rational doubt." Sinking Fund Cases, 99 U. S. 700; Fletcher & Peck, 6 Cranch, 87.

In the class of cases to which the case at bar belongs we have to bear in mind that it has been most conclusively settled that the Government dealings with the Indians are in their nature political, and that there is consequently little or no room left for the interposition of the courts. We can not presume that the Execu-

Digitized by Google

tive Department of the Government acted in bad faith in enacting the act of June 27, 1902, or that either Congress or the President exercised anything but their best judgment in providing for a forestry reserve, and placing limitations upon the cutting of timber upon the pine lands in question. In short, that the act of June 27, 1902, was for the benefit of the Indians, bearing in mind the long term referred to in the act of 1889. But however this may be, we fail to discover anything which takes this case out of the general rule laid down in prior decisions of the Supreme Court. Long Wolf v. Hitchcock, 187 U. S. 553, and Cherokee Nation v. Hitchcock, 187 U. S. 294. In the former case the complainants, claiming due authorization from their tribe, sought to enjoin the defendant, as Secretary of the Interior, from carrying out an alleged unconstitutional act of Congress, the claim of unconstitutionality being that the Indians were deprived of valuable property rights without their consent and to their great injury. The claims are analogous to those made in this proceeding. The court there said:

. . . "Indeed, the controversy which this case presents is concluded by the decision in Cherokee Nation v. Hitchcock, 187 U. S. 294, decided at this term, where it was held that full administrative power was possessed by Congress over Indian tribal property. In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who, as we have held, were in substantial effect the wards of the Government. We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained."

It having been repeatedly held that the Indians are wards of the nation, the authority to deal with property set aside for them by agreement with them, or otherwise, is vested in Congress, and this authority having been so frequently recognized by the Supreme Court, is no longer open for discussion.

In whatever way the lands in question may be dealt with by Congress, so long certainly as the proceeds derived from them are set aside for the Indian beneficiaries, it is not open for the courts to interfere with congressional action, even though it may be thought that some other disposition of the lands would be more beneficial. We fail to see how any property is taken from the Indians by the act of June 27, 1902. The act only deals with the method of treating the lands, which, together with all avails therefrom, remain the property of the Indians. Even though it be held that the withholding of a portion of the lands from sale be considered a taking from the Indians of property, set aside for their benefit by the act of 1889, Congress has often exercised such authority and the courts have recognized the right of the Government so to do. Missouri, Kansas, and Texas Ry. Co. v. Roberts, 152 U. S. 114; Spaulding v. Chandler, 160 U. S. 394; Cherokee Tobacco case, 11 Wall. 616.

The existence of power in Congress to deal with tribal property having been so frequently recognized by the courts for the reason that the power is political and administrative, it would be a work of supererogation to amplify by argument, or citation of authorities, our reasons for believing that the second ground of demurrer is well taken. Nor do we deem it necessary to pass upon either of the other grounds of demurrer.

It follows that the action of the court below in dismissing the bill was correct, and its decree is therefore affirmed, with costs.

Affirmed.

A carrier of live stock is held, in Bosley v. Baltimore & O. R. Co. (W. Va.), 66 L. R. A. 871, not to be able to exempt itself from liability for loss caused by delay in transportation occasioned by the negligence or misfeasance of itself or its servants, by a contract with the shipper providing that, in case of any unusual detention of the live stock caused by the negligence of the carrier or its servants or connecting carriers, the shipper should accept as full compensation the amount actually expended by him in the purchase of food and water for the stock while so detained.

A railroad company is held, in Allen v. Northern P. R. Co. (Wash.), 66 L. R. A. 804, not to be bound to warn passengers who left its cars while being ferried across a river of the danger of attempting to reenter them after the train has begun to move at a point where it is necessary suddenly to increase the speed to give momentum to ascend the incline to the land.

A purchaser who buys land subject to a wife's contingent dower right is held, in Bassell v. Caywood (W. Va.), 66 L. R. A. 880, to assume the risk thereof, and not to be entitled to have the same charged up to, or set off against, the purchase price.

The precipitation of one riding in a vehicle drawn by a horse into a stream crossing a highway at a place where a bridge is open and unguarded, after the horse has traveled 60 to 80 feet after being frightened, during which time the driver is struggling to master him, is held, in Ehleiter v. Milwaukee (Wis.), 66 L. R. A. 915, not to be within the exception to the rule that a municipal corporation is not liable for injuries caused by defects in the streets if the injured person was brought into contact with the defect by the running away of a horse, which permits a recovery in case the loss of control of the horse was only momentary.

Digitized by Google

The right of an ancillary administrator, who has been compelled to pay a debt against the estate after he has, in ignorance thereof, turned over the assets in his hands to the principal administrator, to proceed against one only of the distributees for reimbursement, is sustained, in McClung v. Sieg (W. Va.), 66 L. R. A. 884, where the distributees are all non-residents and she is the only one who has property within the State subject to the jurisdiction of the court

As between successive assignments of a fund in the hands of a third person, the one which, being acquired without notice of prior ones, is first brought to the knowledge of the depositary, is held in Re Phillips (Pa.), 66 L. R. A. 760, to be entitled to priority. Priority rights of different assignees of fund in hands of third person is the subject of a note to this case.

Criticism of the manner in which trials are conducted in court is held, in Ex parte Green (Tex. Crim. App.), 66 L. R. A. 727, not to be punishable as a contempt of the court, unless it refers to some particular case pending before the court.

A real estate broker is held, in Cadigan v. Crabtree (Mass.), 66 L. R. A. 982, not to be entitled to a commission, where, after having produced a customer willing to negotiate for the lease which he was employed to effect, the principal in good faith decides not to lease, terminates the negotiation, and discharges the broker, although the principal subsequently again decides to lease and makes a contract with the customer produced by the broker.

NEW EDITION NOW READY

Collier on Bankruptcy

FIFTH EDITION, 1905

Sheep, 1084 Pages, $6.30.

MATTHEW BENDER & CO.
Law Publishers Albany, N. Y.

1667

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

In the Supreme Court of the District of Columbia
Holding an Equity Court.
William H. McCaffrey et al. v. Lizzie C. Manogue.
In Equity, No. 22,346.

Upon consideration of the report of Henry F. Woodard, Orrin B. Hallam, and Edwin Forrest, trustees, filed herein on the 20th day of April, 1905, stating that they have sold the property described in said report and in these proceedings, to wit, the north 87½ feet, more or less, of lot 20, in square 841, to Richard M. Little for the sum of $9,350.00, it is, by the court, this 20th day of April, A. D. 1905, ordered, adjudged, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, A. D. 1905. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. By the Court: THOS. H. ANDERSON, Justice. A True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

Wilson & Barksdale, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Walter F. Rodrick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. A. CARTY RODRICK, C. BURTON RODRICK, 101 Fifth st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,858. Administration. 16-3t

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Reinhardt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. HENRY K. BROWN, 326 Pa. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,888. Administration. 16-3t

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Pius Stang**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of April, 1905. CARL HAMMEL, 459 D st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,722. Administration. 16-3t

Digitized by Google

Legal Notices.

Birney & Woodard, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Green**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of April, 1905. JOHN A. GARVER, 44 Wall st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,636. Administration. 16-3t

Anson S. Taylor, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry L. Biscoe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. GEORGE W. WHITE, 1401 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,868. Administration. 16-3t

SECOND INSERTION.

George E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eliza B. Anderson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. MARIA L. ANDERSON, SOPHIE C. ANDERSON, 1527 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,810. Administration. 15-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Len For Moy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. HENRY M. KINGSLEY, 516 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,828. Administration. 15-3t

Jas. B. Archer, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Carrie Warren**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. LOUIS F. ZELTMAN, 1800 Orleans st., Balto., Md.; WILLIAM ZELTMAN, 1215 N. Chester st., Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,816. Administration. 15-3t

Legal Notices.

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick D. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. KATHERINE B. SULLIVAN, 428 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,644. Administration. 15-3t

I. S. Lyon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Joseph H. Aukward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. GEORGE H. AUKWARD, 128 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,837. Administration. 15-3t

Albert Sillers and W. H. Green, Solicitors

In the Supreme Court of the District of Columbia.

William H. Ward vs. Mollie J. Ward and John Vaughn.
No. 25,076. Equity Docket No. 56.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of the adultery on the part of the defendant Mollie J. Ward with the corespondent John Vaughn. On motion of the complainant, it is this 5th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 15-3t

Hamilton & Colbert, Solicitors

In the Supeme Court of the District of Columbia.

Minnie Kensington v. Naomi Kensington, younger; Stephen Kensington, Priscilla Kensington, Henry Kensington, the younger; William Kensington, the younger, et al. No. 25,190. Equity Docket No. 56.

The object of this suit is to have sale made, under the provisions of section 100 of the Code, of house 406 Mass. ave. N. W., described as follows: Part of original lot one in square five hundred and seventeen, beginning for same on Mass. ave. 53 feet from northeast corner of said square; thence westwardly on Mass. ave. 18 feet; thence at right angles with said avenue 13 feet; thence south 34 feet to H street; thence east 13 feet 8 inches; thence north 21 feet; thence northeastwardly 20 feet to beginning. Also houses 616, 618, and 620 North Capitol street, described as follows: The south 7 feet front on North Capitol street of lot 38 by the full depth of said lot and all of lots 39, 40, and 41, in Joseph Cabot's subdivision in square 625, as per plat in liber U. K., folio 273, of the records in the office of the surveyor of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainant, it is, this 11th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-3t

Digitized by Google

Legal Notices.

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William C. Dix**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. FRANK P. DAVIS, 1456 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,712. Administration. 15-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph W. Parish**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. EMILY E. PARISH, 217 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,677. Administration. 15-3t

J. Harry Smith, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James H. Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. MARGARET T. LEWIS, 927 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,880. Administration. 15-3t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Anthony Hanlon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. JOHN A. HEENAN, 1237 32d st. N. W; ARTHUR SMALL, 2918 M st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,627. Administration. 15-3t

Henry C. Stewart, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eleanor J. Cooper**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. JAMES M. GREEN, 1336 New York ave.; WM. E. TUTTLE, Westfield, N. J.; ARTHUR D. TUTTLE, Westfield, N. J. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,490. Administration. 15-3t

Legal Notices.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel L. Denty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. BENJ. F. LEIGHTON, C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,821. Adm. 15-3t

Thompson & Laskey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Volney Pursell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. ROSE PURSELL, 412 N. J. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,813. Administration. 15-3t

I. J. Costigan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Abbie B. Clark, Deceased.
No. 12,826. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, it is ordered this 7th day of April, A. D. 1905, that notice be and hereby is given to **William E. Clark**, of Dallas, Texas, and to all others concerned, to appear in said court on **Wednesday, the 10th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer**, deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Digitized by Google

Legal Notices.

Emory H. Bogley, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re the Estate of Indridge Hearns, Deceased.
No. 12,414. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of Indridge Hearns, by James W. Hearns, the named executor in the said last will and testament, it is ordered this 10th day of April, 1905, that notice be and is hereby given to **Richard Hearns, James Hearns**, both residing somewhere in the State of Virginia; **Bernard Smith, Richard J. Smith, Sarah S. Murphy, John A. Crowner, Henry R. Crowner, Martha Crowner, and Sarah B. Smith**, all residing at some unknown address or addresses in the District of Columbia, and to all others concerned, to appear in said court **Monday, the 15th day of May, 1905, at 10 o'clock A. M.**, to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and the Evening Star newspaper once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 15-3t

---

J. McD. Carrington, Solicitor

In the Supreme Court of the District of Columbia.

Mary Elizabeth Lane v. William Lane, Respondent; Florence Corbin, Corespondent. No. 23,876. Equity Docket No. 53.

The object of this suit is to obtain an absolute divorce on the ground of adultery, provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. On motion of the complainant, by James McDowell Carrington, her attorney, it is this 7th day of October, A. D. 1904, ordered that the corespondent, **Florence Corbin**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-3t

---

THIRD INSERTION.

Herbert L. Franc, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George G. Bragunier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905. NELLIE C. BRAGUNIER, 17 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,822. Administration. 14-3t

---

C. G. Lee, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Addison B. Atkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1905 ANNABEL LEE ATKINS, 1318 15th st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,801. Administration. 14-3t

Legal Notices.

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph R. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. LOTTIE H. JOHNSON, 1804 Belmont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,796. Administration. 14-3t

---

Jos. A. Burkart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term for Probate Court Business.
In the Matter of the Estate of Charles B. Osborne, Deceased. Administration No. 10,241.

The administrator d. b. n. of the estate of Charles B. Osborne, deceased, having reported a sale for the sum of six thousand ($6,000) dollars of the following described real estate belonging to said estate: East twenty feet front on G street by a depth of eighty-five feet of lot number five in John Tayloe's subdivision of part of square five hundred eighteen (518) in the city of Washington, in the District of Columbia, subject to a subsisting encumbrance thereon of five thousand ($5,000) dollars, it is this 5th day of April, 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the **5th day of May, 1905**. Provided a copy of this order be inserted in The Washington Law Reporter once in each of three successive weeks before said last named date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

---

F. G. Coldren, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Philander Lucas, Deceased.
No. 12,772. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederick A. Fenning, it is ordered this 4th day of April, A. D. 1905, that notice be and hereby is given to the unknown **heirs and next of kin of said Philander Lucas**, and to all others concerned, to appear in said court on **Tuesday, the 9th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

---

Samuel Maddox, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Richard Goodhart**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of April, 1905. ELLMORE HARRISON GOODHART, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,064. Administration. 14-3t

Digitized by Google

Legal Notices.

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha Cutler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1905. CHARLES R. ROWZEE, 3024 15th st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,802. Administration. 14-3t

---

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George R. Chapman, Deceased.
No. 12,699. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John C. Norwood, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Harry Chapman**, Hoadly Postoffice, Agneville, Virginia; **Eliza Ann Jackson, nee Chapman**, Piscataway Postoffice, Prince George Co., Maryland; **George Chapman**, Washington, D. C.; **Harriet Chapman Carroll, Mary Chapman Carroll, Frances Ford, Arthur Ford, and William Ford**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

---

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Douglas M. Scott**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of April, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,063. Administration. 14-3t

---

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hugh Masterson, Deceased.
No. 12,303. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non cum testamento annexa on said estate, by Alice E. Masterson, daughter of said deceased, it is ordered this 3d day of April, A. D. 1905, that notice be and hereby is given to **Joseph I. Masterson**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

Legal Notices.

Nathl. Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Nathaniel Carusi**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 28th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of April, 1905. CATHARINE A. CARUSI, Administratrix, by Nathl. Wilson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,074. Administration. 14-3t

---

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Henry L. Hyman, Deceased.
No. 11,993. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by John B. Hyman, it is ordered this 5th day of April, A. D. 1905, that notice be and hereby is given to **Charles M. Hyman**, and to all others concerned, to appear in said court on **Friday, the 12th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

---

George E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline Day**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1905. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, formerly UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12 825. Administration. 14-3t

---

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Joseph J. Johnson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 25th day of April, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of April, 1905. JAMES T. HUNTER, 612 F st. N. W., Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,697. Administration. 14-3t

Digitized by Google

Legal Notices

R. B. Behrends, Attorney

Notice is Hereby Given That on the 4th day of April, 1905, a petition was filed in the Supreme Court of the District of Columbia, by the American Butterine Company, a corporation created and existing under the laws of the United States applicable to the District of Columbia, stating that the said company has abandoned the business of manufacturing and selling butterine, and that its present name is, therefore, inappropriate to the business which it intends to conduct in the future, namely, the dairy and ice business; that the stockholders of the company, at their annual meeting in January, 1905, resolved to change the company's name to Standard Dairy and Ice Company, and the prayer of said petition is for such change. AMERICAN BUTTERINE COMPANY, by G. Lloyd Magruder, President. 14-3t

E. H. Thomas, Solicitor

In the Supreme Court of the District of Columbia.

Calvin Pardee et al., Complainants, v. George W. Clark, Phebe W. Ross, Defendants. No. 25,248. Equity Docket No. ——.

The object of this suit is to obtain release of deed of trust recorded January 19, 1872, in the land records of the District of Columbia, in liber 664, folio 454, made by Jane R. Elliott to said George W. Clark, trustee, to secure said Phebe W. Ross $1,700, represented by notes, the last of which matured the 18th day of January, 1875. On motion of the complainants, it is, this 6th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 14-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eliza M. Higley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of March, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,771. Admn. 14-3t

Chas. W. Boyle, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Francis B. Conner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of April, 1905. EDITH C. CONNER, 1106 I st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,814. Administration. 14-3t

In the Supreme Court of the District of Columbia.
Wm. H. Frey et al. vs. Elizabeth T. Frey et al.
Equity, 22,055.

Jesse H. Wilson and Levin S. Frey, trustees, having reported to the court an offer of twenty-seven hundred (2,700) dollars by Harry S. Welch, to be paid in cash on ratification of the sale, for lot fifty-one (51) and the south two (2) feet of lot fifty (50) by width thereof, in Marche's subdivision of square eight hundred and ninety-six (896), as per plat in the office of the surveyor, in liber 17, folio 43, it is this 4th day of April, 1905, ordered that said offer be accepted, and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **5th day of May, 1905**. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-3t

Legal Notices.

Gordon & Gordon, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of William D. C. Murdock, Deceased. No. 9404. Administration Docket, 26.

William A. Gordon, administrator herein, having settled his accounts and made partial distribution of the funds in his hands, and having made application to the court to appoint a time and place for making full and final distribution of the balance remaining in his hands belonging to the estate of said William D. C. Murdock, it is this 31st day of March, 1905, ordered that notice be and it hereby is given to all persons having any claim to or interest in said fund, that the court has appointed **April the 28th, 1905, at 10 o'clock A. M.**, as the time and said court room as the place for making full and final payment and distribution of said fund remaining in his hands undistributed, when and where all persons interested in or entitled to the same are to attend. Provided a copy of this order be served on the next of kin of said decedent at least ten days before the appointed day and a copy of this order be published in The Washington Post and Evening Star and The Washington Law Reporter once in each of three successive weeks before said appointed day, the first publication to be not less than 20 days before said day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 14-3t

H. W. Sohon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary Ellen French, Deceased.
No. 12,792. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William B. French, it is ordered, this 5th day of April, A. D. 1905, that notice be and hereby is given to **Peter Brady, Richard Brady, Henry Brady, Robert Brady, John Brady, Charles Brady, James Brady, and Margaret Brady**, and to all others concerned, to appear in said court on **Monday, the 8th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 14-3t

SEVENTH INSERTION.

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **said William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-8t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 17

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - APRIL 28, 1905

CONTENTS.

Editorial 257
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Ichataro Morimura et al., appellants, v. Mansour Samaha 258
Georgetown and Tennallytown Railway Company, appellant, v. Elizabeth B. Smith, administratrix 261
Legal Notices 267

Liability of Master for Failure to Employ Competent Servants.

The liability of a railway company to a servant for its failure to employ competent, and to discharge incompetent, fellow servants, is elaborately discussed in the opinion of the Eighth Circuit Court of Appeals, in the case of Southern Pacific Company v. Hatzer, 135 Fed. 272. The opinion is by Circuit Judge Sanborn, and merits a careful perusal by all lawyers. The points decided are stated in the syllabus to the report of the case as follows:

It is the duty of the master to exercise reasonable care to employ competent servants, and when he has exercised this care this duty is discharged.

Another duty of the master is to discharge a servant when he knows, or by the exercise of reasonable diligence would have known, that the servant had contracted the habit or character of negligence, of drunkenness, or of lack of skill, so that he is incompetent.

The diligence required of the master to learn the habits or characters of servants employed with due care is not of that degree demanded in his employment of servants, or in his inspection of machinery, because careful and skillful men grow more careful and skillful, and the legal presumption is that servants once competent continue so. The master may rely upon the presumption of competency until he has notice or knowledge to the contrary.

The reasonable diligence and care which the master is required to exercise here is not that high degree of care which a prudent business man would use if the want of it endangered his own person. It is that degree of care which prudent railway officials exercise, under like circumstances; that care which such officials charged with the duty of discharging servants employed with due care commonly exercise as soon as they know, or by the exercise of reasonable diligence would know, that such servants have become incompetent.

After proof of the incompetence of a servant, his general reputation among those acquainted with him or his work is competent to prove notice of the habit of incompetence to the master. But reputation among a particular class, which obviously includes but a part of those who knew his character or work, is inadmissible for this purpose.

Servants assume the risk of the occasional acts of negligence of their fellow servants, and the master is not liable for them, but the servants may by notice cast the risk of the habitual negligence of their coemployees upon the master.

Evidence of specific acts of negligence known to the master, and of acts of negligence like those which cause the death of passengers, so notorious that the master must have known of them if he exercised reasonable diligence, is admissible to prove the habit or character for incompetence of a servant who is employed with due care.

Specific acts of negligence, of drunkenness, of lack of skill, or of incompetence, of which the master had no notice, are inadmissible to prove the incompetence of a servant employed with due care. The proper proof of habit and character, as of reputation, in such a case, is the testimony of witnesses qualified to speak of them, subject to proper cross-examination relative to the facts upon which their testimony is based.

Amendment to Rule 6 of Rules of Justices of the Peace.

The following amendment to Rule 6 of Rules of Practice before Justices of the Peace was promulgated by the Supreme Court of the District, in general term, on Thursday, April 20, 1905:

"Ordered that Rule No. 6 of the Rules of Practice before Justices of the Peace in the District of Columbia, promulgated June 23, 1903, be, and hereby is, amended by adding thereto the following additional sections:

"'2. When both parties to a landlord and tenant suit are absent at the time set for trial, the justice shall hold the case until the close of office hours on that day, when, if neither party appears, the suit shall be discontinued at the cost of the plaintiff.

"'3. A suit involving both the right of possession of real property and a claim for money for rent under section 996 of the Code shall be subject to the provisions of this rule.'"

Digitized by Google

Court of Appeals of the District of Columbia.

ICHITARO MORIMURA ET AL., APPELLANTS,
v.
MANSOUR SAMAHA.

FRAUDULENT CONVEYANCES; KNOWLEDGE OF FRAUD BY VENDEE; NOTICE; ATTACHMENT AND GARNISHMENT; COUNSEL FEES TO GARNISHEE.

1. Where a sale has been made by the vendor with intent to defraud creditors the burden is upon the purchaser to prove that he actually paid the consideration named in the contract of sale, and in addition thereto he must have had no previous notice of the fraudulent intent of the vendor.
2. The burden is upon creditors attacking the sale to show, by evidence direct or circumstantial, that the purchaser had such notice.
3. It is not necessary in such case, in order to constitute bad faith on the part of the purchaser, who may have paid a valuable consideration, that he either actually participated in the scheme to defraud or had actual knowledge of the fraudulent intent of his vendor; but bad faith may exist where the facts and circumstances of the transaction are such as to put him upon inquiry.
4. A purchaser from a fraudulent vendor is put upon inquiry where he has knowledge of facts and circumstances reasonably sufficient to excite the suspicions of a man of ordinary prudence and business capacity as to the purpose and intent of his vendor, which, if inquired into with ordinary diligence, would lead to the discovery of that purpose and intent. In such a case his situation is not different in law from that of one who is shown to have had direct and certain knowledge; and it is not required that he shall wilfully abstain from making inquiry to avoid having notice.
5. The refusal of an instruction requested by the creditors, correctly stating the above principles, held error.
6. Section 473, Code D. C., providing that in proceedings by attachment and garnishment, where the judgment is in favor of the garnishee, he shall be allowed a reasonable counsel fee, held valid.
7. What is a reasonable fee in a particular case is a matter within the discretion of the court, and its exercise of that discretion will not be reviewed except where palpably abused.

No. 1451. Decided March 8, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,633, in favor of the claimant in a proceeding by attachment and garnishment. Reversed.

Mr. C. C. Tucker, *Mr. J. Miller Kenyon*, and *Mr. H. W. Sohon* for the appellants.

Mr. J. H. Ralston, *Mr. F. L. Siddons*, and *Mr. Eugene A. Jones* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a judgment rendered in favor of the claimant in a proceeding by attachment and garnishment.

Haggar Brothers and Daavid Company had been engaged in business in the city of Washington as dealers in oriental goods, etc. On November 30, 1903, they were indebted to various merchants in the city of New York in about the sum of $11,392 for merchandise sold and delivered between October 15 and November 27, 1903. Twenty-two deliveries were made between November 1 and November 27. Credits had been given for 30 and 60 days, and the bills were not due until after November 30, 1903. On that day Haggar Brothers and Daavid Company sold their stock in bulk to Mansour Samaha. A written assignment was made on that date reciting a consideration of $10,679.60 in hand paid. This instrument was recorded, but the inventory attached when produced on the trial was not. This inventory is general in its descriptions of the articles contained in the stock. Many items are included in one entry, of which the following is an example: "676 pieces of Japanese china, Austrian, German and French china, terra cotta figures Deutch and R. Etzuma—$559.75."

Prior to this transfer Haggar Bros. and Daavid Co. had been selling goods daily at auction. On December 4, 1903, they addressed the following letter to one of their creditors:

"Gentlemen: We regret to have to inform you that owing to losses incident to an unusually dull season and unexpected heavy expenses, we have been compelled to discontinue our business. We endeavored very earnestly to continue, but lack of capital, with the losses suffered, rendered this impossible. An opportunity presented itself to us to sell out what was left of the stock and business, and this we did to Mansour Samaha, of this city, who has taken possession of the property, our bill of sale to him having been recorded a few days since.

"We are at this time unable to discharge our indebtedness to you, but we expect to resume business in February next, when we shall receive, we believe, capital sufficient to permit us to do this. About that time we hope to commence to pay the debtors that we now owe, and liquidate them in full as rapidly as the means at our disposal will permit.

"In conclusion, we trust that you will be patient with us, and accept our assurance that it is our very sincere desire to get rid of all of our obligations as soon as it is possible to do so. In the meantime, we suggest, nothing could be gained by suing us, and indeed if that were done, it would embarrass very much our expected resumption of business in February next.

"Truly yours,
"HAGGAR BROS. & DAAVID CO.
"Per N. E. HAGGAR.
"S. E. HAGGAR.
"F. S. G. DAAVID."

On December 9, 1903, Morimura Brothers began an action of assumpsit against Haggar Bros. and Daavid Company in the Supreme Court of this District, their particulars of demand showing bills for merchandise sold and delivered amounting in the aggregate to $875.79. A writ of attachment was sued out on the same day and sufficient of the goods in the hands of Samaha to satisfy the demand and costs were seized thereunder. The writ further commanded the marshal to notify any person, other than defendants, who might be in possession, to appear and show cause why the property should not be condemned.

Notice in garnishment was also served upon Samaha to show cause, etc., and to answer the ordinary interrogatories, two in number, propounded to him as garnishee. On December 11, 1903, Samaha filed a sworn petition in the cause alleging the seizure of the goods and setting up title thereto. He alleged the purchase and assignment made on November 30 for the sum of $10,679.60, and that at the time

Digitized by Google

of making the same and paying the money he had "no notice, either actual, constructive, express or implied," of the existence of any claims against his vendors and so forth. This petition was also prayed to be taken as answer to the interrogatories that had been propounded to him. Plaintiffs joined issue on the petition and asked for trial by jury. December 15, 1903, the attached property was delivered to Samaha upon the execution of a bond in due form. On December 10, 1903, A. and M. Karagheusian began a similar action against Haggar Bros. and Daavid Company to recover $1,767.55, in which like proceedings were had. The two cases were tried together on February 10, 1904, and resulted in a verdict for the claimant Samaha. The court overruled motions for new trial and entered judgment for Samaha in each case, discharging the property seized with costs, and an allowance of $150 as reasonable counsel fees.

Each plaintiff appealed from the judgment separately rendered, and both appeals have been argued and submitted together.

1. The first questions arise on exceptions taken by the appellants to the exclusion of evidence and will be considered together.

It appears from Samaha's testimony that he was engaged in business as a dealer in rugs and other Oriental goods in a small store on Fourteenth street, about 14 by 30 feet in floor dimension, with a stock of the average value during the season of between $5,000 and $6,000. That he had a stock between $15,000 and $16,000 in value at Atlantic City; that Haggar Brothers and Daavid Company proposed to sell their entire stock at 1110 F street N. W., to him about November 23, 1903; that he examined the stock, made an inventory, and concluded the purchase for the sum of $10,679.60, which he paid in cash, turning over bills for that amount; that he had the money in a small safe in his store which cost $40; that he was in the habit of keeping his money in the safe, but had small accounts for convenience with two banks in the city; that $4,000 of this money had been obtained from one Maloof in New York, on the 10th day of November, 1903; that he went to New York to attend a large rug sale which was advertised for cash; that he asked Maloof to lend him $4,000, who got the money from his bank and delivered it to him. That he gave Maloof his note for it without security. That he purchased a lot of goods and offered the cash, but the seller told him his credit was good and billed them to him on a credit of 60 days. That as he had to pay interest to Maloof anyhow, he brought the money home and deposited it in the safe. That he used it in paying Haggar Bros. and Daavid Company. After the attachment he delivered some of these goods and some of his own to Maloof in payment of the said note. The claimant, to whom had been assigned the position of plaintiff on the trial, rested his case on his own testimony. As tending to show that Maloof could not have advanced $4,000 in cash to Samaha as alleged, the creditors offered a transcript of proceedings in a court of New York, showing an action against Maloof by one Zainey to recover $2,100, begun May 15, 1902, in which judgment had been rendered for $2,205.40 on March 6, 1903. The transcript showed also the examination of Maloof in supplementary proceedings under the New York practice, which examination continued from time to time to November 30, 1903. Under this examination Maloof denied having any property or an interest in the N. N. Maloof Company, of which he was treasurer, and stated that he owned one share of stock in said corporation of $100 par value which had been hypothecated for a loan of $90, and that he was then an employee of said company receiving a salary for his services. The court excluded the record on the objection of the claimant, to which the creditors excepted.

N. N. Maloof was introduced as a witness for claimant in rebuttal. He testified to the delivery to Samaha of the $4,000 in New York on November 10, 1903. The money came from the corporation of which Maloof was treasurer. Maloof drew a check on the Fulton National Bank in favor of bearer for $4,000 and signed the same as treasurer. The check was produced and shows the word treasurer in very small print after the signature of Maloof. It was indorsed N. N. Maloof & Co., N. N. Maloof, treasurer, and W. P. Maloof; that he cashed the check and delivered the cash to Samaha for his rug purchase; that there was more money in bank than this; that the loan was made to Samaha, who was a good man and in good credit, and that his business was to give money "to make interest better than selling goods. Interest can be seven or eight per cent, and make something more by my commission."

Counsel for the creditors then proposed to ask witness some questions concerning his statement as being a stockholder in the N. N. Maloof Co., but were interrupted by an objection offered by the claimant to the effect that the loan had been made by the Maloof Company and the supplemental proceedings related to the witness personally. Counsel for the creditors then said: "I purpose showing by this record that this man testified in these proceedings that he had one share of stock of the par value of $100 in that company; that he had hypothecated to Mr. Macksuld, an officer of the company, for $90. I further purpose to show by this deposition that he was simply an employee of that company and had no other interest in it but this one share of stock, and that his story that he loaned $4,000 of this company's money, or promised to loan it, without consulting any of the other officers of the company, is a mere fabrication." The transcript was then offered, again excluded, and exception noted.

There was no error in excluding this transcript upon the occasion of either offer. There is no rule of evidence or exception to any such rule that would warrant its admission as original evidence.

The only proper use that could be made of it would be in the cross-examination of Maloof. As the fact of the advance of the $4,000 to Samaha had been made by him of great materiality in the determination of his claim as an innocent purchaser for value, considerable latitude in the cross-examination of Maloof would be permissible in order to determine its truth or falsity. His connection with the Maloof Company, his interest therein, his authority to loan its money without the advice and consent of other officers, and kindred matters might

Digitized by Google

properly be inquired into. Sonnentheil v. Lyon, 172 U. S. 401, 410. As said by Mr. Justice Brown in that case: "Parties contemplating a fraud frequently pursue such devious courses to conceal their designs, and resort to such subtle practices to mislead their unsecured creditors, that the fraud becomes impossible to detect, unless the door be swung wide open for the admission of all testimony having any possible bearing upon the question. Facts which to the court might seem of no pertinence and be rejected as having no legal tendency to show knowledge of the fraud, might be considered by the jury as significant and indicative of a guilty participation. Even negative evidence may sometimes have a positive value." If a statement of importance in this view could be contradicted by one made in his former examination, after his attention had been directly called to it, then so much of the transcript as would establish that contradiction would be admissible to impeach the witnesses' credibility, but for no other purpose.

It would seem that the purpose of the counsel for the creditors was to proceed in that way, until interrupted by the objection, but as his question was not completed, so far as the bill of exception discloses, we have nothing before us by which to determine its admissibility. Shauer v. Alterton, 151 U. S. 607, 616.

2. That Haggar Bros. & Daavid Co. made the sale to Samaha with the intent to defraud their many creditors the jury could have had no reasonable doubt. The thing for them to ascertain from the evidence was whether Samaha made the purchase in good faith. To show purchase in good faith the burden was upon him to prove that he actually paid the consideration named in the contract of sale. In addition thereto he must have had no previous notice of the fraudulent intent of his vendors. Upon this proposition the presumption was in his favor, and the burden devolved upon the creditors to show, by evidence direct or circumstantial, that he had such notice. Jones v. Simpson, 116 U. S. 609, 614.

For the guidance of the jury in determining these simple issues three special instructions were given to the jury at the request of the claimant, and eighteen were requested by the creditors, five of which were granted and thirteen refused.

It is unnecessary to consider these in detail. Of those given to the jury in application to the evidence relating to the payment of the consideration, it is sufficient to say that they do not appear to be objectionable. Where a sale has been made by the vendor with the intent to defraud creditors it is not necessary to constitute bad faith in the purchaser, who may have paid a valuable consideration, that he either actually participated in the scheme to defraud or had actual knowledge of the fraudulent intent of his vendor. Bad faith may exist where the facts and circumstances of the transaction are such as to put him upon inquiry. Jones v. Simpson, 116 U. S. 609, 614; Schauer v. Alterton, 151 U. S. 607, 622; Sonnenthiel v. Morelein Brewing Co., 172 U. S. 401, 413; Humphries v. Freeman, 22 Tex. 45, 50; Walt Fraud Con. (2 ed.) sections 379, 380; Bump Fraud Con. (4 ed.) sec. 184.

A purchaser from a fraudulent vendor, as in other cases of purchasers of defective titles, is put upon inquiry where he has knowledge of facts and circumstances reasonably sufficient to excite the suspicions of a man of ordinary prudence and business capacity as to the purpose and intent of his vendor, which, if inquired into with ordinary diligence, would lead to the discovery of that purpose and intent. In such a case his situation is not different in law from that of one who is shown to have had direct and certain knowledge. Bump Fraud Con. (4 ed.) section 184, and cases cited; Wood v. Carpenter, 101 U. S. 135, 141; Manogue v. Bryant, 15 App. D. C. 245, 261: 27 Wash. Law Rep. 478.

The third special instruction requested by the creditors correctly stated this principle for the information of the jury and ought to have been given or embodied in the general charge.

After its refusal the court read the statute relating to fraudulent conveyances and then charged the jury as follows:

"As to what is meant by the words 'previous notice' in our statute must be largely for the consideration of the jury, as a matter of fact. The words are plain and a judicial definition can not be of great aid for a jury of ordinary intelligence in the use of the English language. If Samaha knew that said debtors, Hagar Brothers & Daavid Company did actually intend to hinder, delay, or defraud their creditors, by making said sale, then he had notice, no matter how he obtained such knowledge; and if he was notified of any fact exciting suspicion and which would necessarily make him conscious of having the means of knowledge of such intent within his reach by making inquiry, and he should wilfully abstain from making such inquiry to avoid having notice, he must be held to have notice because of such fact and such conscious knowledge of the means of information."

This was an incorrect statement of the law. As before pointed out, all that is required is that the surrounding facts and circumstances shall be reasonably sufficient to excite the suspicions of a person of ordinary care and business capacity, and prompt an inquiry, which, if prosecuted with reasonable diligence in view of all the circumstances, would naturally lead to the discovery of the fraudulent intent of the vendor. It is not required that he shall "wilfully abstain from making such inquiry to avoid having notice."

3. The last question for consideration arises on error assigned upon exceptions taken to the allowance by the court of the sum of $150 in each case as the reasonable counsel fee of the garnishee.

Section 470 of the Code permits the levy of an attachment in actions by creditors upon property in the hands of the "alleged fraudulent assignee or transferree, as a garnishee." Section 472 provides that if the levy shall not be set aside, the garnishee may plead that he was a bona fide purchaser without notice of any fraud on the part of the defendant, and said plea shall make an issue to be tried by the court or by the jury if either party desires it. See section 460. Section 473 provides that: "If said issue is found in favor of the said garnishee,

Digitized by Google

judgment shall be rendered in his favor for his costs and a reasonable counsel fee."

We can not agree with the appellants that this provision is beyond the power of Congress to enact. The Code provides a special remedy by attachment, on behalf of creditors in such cases, before their claims accrue due, which is coupled with the condition aforesaid. If parties avail themselves of the remedy they must do it subject to the condition.

The amount of the fee must be reasonable; that is to say, determinable by the facts and circumstances of the case.

What is a reasonable fee in a particular case of the kind is a matter within the discretion of the court, and the exercise of that discretion will not be reviewed except where palpably abused.

For the reasons heretofore given, the judgment will be reversed with costs, and the cause remanded with direction to set aside the verdict and grant a new trial. It is so ordered.

Reversed.

GEORGETOWN AND TENNALLYTOWN RAILWAY COMPANY, APPELLANT, v. ELIZABETH B. SMITH, ADMINISTRATRIX.

PRACTICE; CARRIERS; NEGLIGENCE; CONTRIBUTORY NEGLIGENCE; INSTRUCTIONS.

1. An objection that the trial court erred in refusing to direct a verdict for defendant because, having directed a verdict in favor of one of two defendants, there was a defect in the pleadings, urged for the first time on appeal, comes too late, even were the objection available to the defendant had it been taken in proper form and time.
2. Whether a passenger on a street car injured by reason of the protrusion of his arm from the car is guilty of contributory negligence, is a question of fact for the jury, and not a question of law for the court.
3. It is gross negligence for a street railway company to use cars which almost touch as they pass each other, and it is doubly negligent for it to run such cars with a running rail placed where passengers would naturally rest their arms. Under such circumstances it is the duty of the company, at the very least, to see that one of the cars comes to a full stop and that the other passes very slowly.
4. In an action for wrongful death, it appeared the cars of defendant company, when alongside each other, were less than three inches apart, and when in motion were apt to come into contact. Deceased was sitting with his arm resting on the running rail of the car, and as a car passed on the other track he was caught between the cars, pulled out of the one in which he was riding, and killed. *Held*, that an instruction that if deceased extended his arm beyond the outer edge of the car to such an extent that he was struck by the car coming in the opposite direction, and that but for such action on his part the accident would not have happened, the defendant was not liable, was properly refused.
5. Danger of being hit by a passing car is not such a peril as a passenger on a street car is bound to anticipate.
6. A requested instruction, that if the jury found the deceased had been in the habit of passing over defendant's road at the place of the accident that would justify an inference that he had knowledge of the space between the cars, was properly refused.
7. It is the duty of a common carrier of passengers in street cars to construct its railroad and to use such equipment as will not endanger the safety of its passengers.
8. The charge of the trial court should be taken as a whole, and when fair an appellate court should not labor to sustain an objection based upon a sentence which, taken by itself, may not express in the happiest terms a proposition which is correct.
9. The charge of the trial court in the present case held eminently fair to defendant.

No. 1444. Decided March 7, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,257, entered upon a verdict for plaintiff in an action for death by wrongful act. Reversed.

Mr. J. J. Darlington, *Mr. C. C. Cole*, and *Mr. B. W. Parker* for the appellant.

Mr. C. A. Douglass, *Mr. E. S. Douglass*, and *Mr. Levi H. David* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment entered upon the verdict of the jury in favor of the appellee, the plaintiff below, for the sum of $9,000, with interest from January 22, 1904, and for costs.

The suit was brought to recover the sum of $10,000, damages accruing by reason of the negligence of the defendant, which resulted in the death of plaintiff's husband. In the suit as originally brought, the District of Columbia was made a codefendant, but the court directed a verdict in its favor and the railway company then became sole defendant. The facts pertinent to the case are these:

The deceased, Peter A. Smith, was the husband of the appellee and left also surviving him five children, the youngest a little over 3 years and the oldest not quite 19 years of age. The accident causing his death occurred on the night of July 1, 1901. The deceased, a carpenter by trade, was a passenger on one of defendant's cars, and was on his way from Washington to his home at Tennallytown. The car was what is known as a "panel" car; that is, one which could be used as a closed car in winter and an open car in summer by the removal of the panels in the sides of the car. When these panels are out there is an opening from the floor almost to the top of the car. Upright posts between each seat hold the panels in place when they are used and provide a support for a running rail along the sides of the car, which is so placed that when the passengers are sitting down their arms rest comfortably upon the running rod. He occupied the last seat on the left-hand side of the car which was going north and was sitting with his head back against the car and his arm resting on the running rail. The car crossed M street, going up Thirty-second street, and when it arrived at Prospect street, which runs on a parallel line with M street, and where there is a slight bend in the road, it passed a car coming in the opposite direction. The deceased was caught between the cars and drawn out of the one in which he was seated, and when the car had passed he was lying dead between the tracks. As is usual when such an accident occurs, there is more or less conflict in the testimony as to how the accident occurred and what transpired just before and just after it. After the accident the cars were pushed back so that they were alongside each other, and the distance was measured between these uprights on each car and was between two and one-half and three inches. The space between the bolts that held the running bar was not more than two and one-half inches. These large cars had been operated on the line from six to twelve months prior to the accident.

Charles H. Williams, a witness called on behalf of plaintiff, thus describes the accident:

Digitized by Google

That when the car got to Prospect street witness heard a great commotion; that Prospect street runs on a parallel line with M street, and from 150 to 200 feet from M street, and runs from Thirty-second street west toward the University; that it does not cross Thirty-second street; that witness heard a great commotion and clanging of bells on the car coming from the north going towards the starting place, or station; that the road has double tracks; that Thirty-second street is of medium width; it is a narrow street; it is called a narrow street; that just as you get to Prospect street there is a slight bend in the road; that just as the car came around the curve he heard a crash, and he saw the body of deceased going out of the window or out of the panel; that the gong he heard sounded was one of the foot gongs on the front platforms of all the cars; that it appeared to witness that the noise and all the commotion was from the platform of the car coming from Tennallytown; that after this ringing of bells neither car came to a full stop until they passed, when the body of the deceased dropped out; that witness did not tell what struck deceased; all that he could see was the man go out of the window; . . . that it pulled him out, and as the cars passed one another something sounded like the crashing and smashing of wood as one was passing the other, until both cars could separate themselves; that witness was on the back platform when he saw the body of deceased drop; that witness can not be positive whether the body went out over or under the guard rail; that the car going south was of the same pattern as the one going north; that it was a large car; does not know what they weigh, but they are immense big cars; both were the same size; that both the cars came to a standstill after the man's body went out; that witness went where the man's body lay; that to the best of his recollection it was on all-fours and appeared to be dead.

On cross-examination the witness testified that when he got on the car deceased's arm was resting on the rail and also extending out over the rail, but he could not tell how far, and his head was resting upon his fingers; that deceased's head was thrown over and back towards the left side, resting upon his fingers or hands; that when he heard the noise or confusion he looked back and saw the body of deceased going out of the space between the two uprights, the one in the rear and the one in front of him; that when he looked around and saw the body going out, it was up on the highest part of the car, above the rail; that part of the body was outside and part inside of the car; that he did not know or see how the body got into that position; that the bell or gong on the south-bound car gave a warning before it reached the north-bound car, and witness heard it make a considerable noise; that about that time the witness heard the conductor on the north-bound car holler "Look out, there;" that the conductor was up in front collecting fares.

Several other witnesses were called by appellee in corroboration and their testimony is in substance the same. It may be added that the testimony clearly shows that the space between these two large cars when they passed on the part of the line where the accident occurred was of not more than two and a half or three inches, and it is evident that the least rocking or swaying of the cars brings them in contact. That this is a dangerous place for these large cars to pass is shown by the testimony of witnesses called for both parties. Defendant's motormen and conductors who were in charge of the two cars at the time of the accident were called as withesses and their testimony, in substance, shows that as a rule the cars were run very slowly at the point where the accident occurred, and that the passengers were warned to keep their arms and hands in. At the time of the acdident the cars were not running rapidly, and the motorman on the south-bound car testified that as his car passed the north-bound car he saw deceased resting his arm on the seat and told him to take it down, and the conductor of the car in which deceased was a passenger testified that he was collecting fares at the front of his car, and called out to the passengers as the cars met to keep their arms inside of the car loud enough for all to hear. It also appears that there were notices posted in the cars to the effect that passengers must keep their arms and bodies on the inside of the lines of the car. The reason given by appellant's employees for warning passengers to take their arms off the rail was because the cars pass so close that it was not safe for passengers to leave their arms on the rail.

There is no proof that the deceased heard any warning, or that if warning was given and heard it was in time to enable him to avoid the danger. Other passengers did not hear any warning given. Mr. Hunt, a passenger on the same car with deceased, testifies that he heard nothing said or done, or any gongs ringing, or any commotion preceding the accident. Mr. McGill, the former register of wills in the District, and a passenger upon the same car, testifies that there was a general ringing and clattering of bells, just about the time this thing occurred, almost simultaneously. Mr. Dixon, who was sitting right behind the deceased on the same side of the car, testifies that the deceased had his arm on the rail, the usual arm rest, and was noticing a little child in front of him; that the deceased had his arm resting on that rail and he did not notice the car come down on the other track. Mr. Harding, motorman of the car on which deceased was riding, testifies that he did not remember whether he rang his gong or not at the time of the accident and that he did not notice whether the motorman of the south-bound car sounded his gong. It will be seen, therefore, that there was more or less conflict of testimony as to what occurred at the time of the accident.

At the close of the evidence the defendant's counsel requested the court to grant, separately and severally, eight instructions to the jury. Five of these were refused and exceptions duly taken. The court then charged the jury, and counsel for defendant excepted, separately and severally, to four paragraphs of the charge. The assignment of errors is based upon the refusals to charge and upon such parts of the charge as were excepted to. The alleged errors will be considered in order.

1. The first error is based upon the refusal of the court to instruct the jury that upon the

Digitized by Google

whole evidence in the case the verdict should be for the defendant. It is insisted that it was error to refuse this instruction, first, because of a fatal defect in the pleadings, and, second, on account of contributory negligence. The first point grows out of the fact that the District of Columbia was joined as a defendant, and that upon motion made the court directed a verdict in its favor which left the railway company the sole defendant. The court commenced his charge to the jury by a statement of this fact, and no objection was made to it, and no exception taken; and the record fails to disclose that the question was raised at all in any way before the trial court. It does not appear that counsel, in asking this instruction, suggested that one of the grounds asked for the direction was that a verdict had been directed for the co-defendant. The objection was not taken in proper form nor in proper time. Perry on Pleading, p. 126; Norman v. U. S., 20 App. D. C. 494: 30 Wash. Law Rep. 810; Gas Light Co. v. Lansden, 9 App. D. C. 508: 24 Wash. Law Rep. 807. Aside from this, we do not think that the objection could avail the appellant had it been taken in proper form and time.

Referring now to the question of contributory negligence as the ground upon which the court erred in not directing a verdict in favor of the defendant, we are clearly of the opinion that there is no force to the contention. When passengers upon railroads operated by steam have received injuries by reason of the protrusion of their arms out of open windows, the courts in considering such cases have differed as to whether such protrusion is, as matter of law, contributory negligence. There has also been some conflict of decisions when the injured persons have been passengers upon street cars, but the weight of authority is that the question of negligence is a question of fact for the jury and not a question of law to be ruled upon by the court.

An instructive decision upon this question is to be found in the dissenting opinion of Judge O'Brien, of the New York Court of Appeals, in Sias v. Rochester Ry. Co., 169 N. Y. 118. The case went off on a question other than that of negligence, in reference to which question a majority of the court expressed no opinion. At page 125, Judge O'Brien said:

"The defendant was engaged in exercising a franchise for the conveyance of the public by operating a railroad in a public street. It had the power and it was its duty to construct the railroad in such a way as not to endanger the safety of the passengers. If it constructed its tracks so close to a tree or any other physical obstruction as to endanger the safety of the traveling public it could have been held to have neglected its duty and to have been wanting in that degree of care and prudence which the law imposed upon it, and so the courts have held in similar cases."

And at page 127 he said: "Nor has this court ever held that it was contributory negligence, as matter of law, for a passenger to protrude his body slightly beyond the side of the street car, but it has held that the conduct of the passenger in such cases, whether negligent or otherwise, is a question for the jury." Many authorities are cited in support of these propositions.

In Elliott v. Newport Str. Co., 18 R. I. 707, a passenger riding on the footboard of a car was hit by the trolley pole, which was ten and one-half inches distant from the outer edge of the footboard, thrown off the car and injured. The court held that on the testimony it could not say, as matter of law, either that the defendant was not negligent, or that the plaintiff was guilty of negligence which contributed to the accident, and that therefore the court was not warranted in directing a verdict for the defendent. In Cummings v. Worcester, etc., Railway, 166 Mass. 220, it was held that a street car passenger, riding with part of his body projecting beyond the line of a car, can not be held, as matter of law, to be guilty of negligence, or to have assumed the risk of contact with things outside of the car, and that these questions are for the jury. See also Powers v. Boston, 154 Mass. 60; Miller v. St. Louis R. R. Co., 5 Mo. Rep. 477; Spencer v. Milwaukee, etc., R. R. Co., 17 Wis. 487; Summers v. Crescent Railway Co., 34 La. Ann. 139: Tucker v. Buffalo R. Co., 53 N. Y. App. Div. 571, affirmed 169 N. Y. 589.

2. Error is predicated upon the refusal of the court to instruct the jury that should they find from the evidence that the deceased exposed or extended his arm or head, or any part of his person, beyond the outer part of the car to such an extent that he was struck by the car passing in the opposite direction, and that but for such action on his part the accident would not have happened, they should find for the defendant. There was no error on the part of the court in refusing to charge this proposition. In Spencer v. Milwaukee, &c., Co., supra, the court pertinently said: "It is probably the habit of every person while riding in the cars, to rest the arm upon the base of the window. If the window is open it is liable to extend slightly outside. This, we suppose, is a common habit. There is always more or less space between the outside of the car and any structure erected by the side of the track, and must necessarily be so to accomodate the motion of the car. Passengers know this and regulate their conduct accordingly. They do not suppose that the agents and managers of the road suffer obstacles to be so placed as barely to miss the cars while passing."

The uncontradicted testimony shows that the space between two of these cars was not more than three inches and it was gross negligence upon the part of the appellant to use cars which almost touched when they passed, and it was doubly negligent for them to run such cars, with the panels taken out, with a running rail placed where the passengers would naturally rest their arms. At the very least, it was the duty of the company to see that one of the cars came to a full stop and that the other passed very slowly, because, as is well known, there is more or less swaying of cars when in motion, and the peril was present whenever two open cars met and the danger was caused by their very close proximity. As was said by the court in Geitz v. Milwaukee City R. Co., 72 Wis. 307: "We suppose it is common knowledge that a car being propelled upon a railroad track will be swayed by the inequalities of the track."

3. This error is based upon the refusal of the court to instruct the jury that if the deceased

Digitized by Google

changed his position after the front of the car had passed him without striking him, and that by such change of position he was struck by the car, the verdict should be for the defendant.

Danger of being hit by a passing car is not such a peril as a passenger on a street car is bound to anticipate, and in the present case if there was the ringing of gongs and the shouting that is asserted by some of the witnesses to have occurred before the deceased was struck, it would be quite natural for him to shift his position, although there is no sufficient evidence to warrant such supposition. A more natural supposition is that if part of the car passed him in safety, that the swaying of the cars brought them closer together and resulted in the relative change of position of the cars rather than in any change in the position of the deceased. There was no error in the refusal to instruct the jury on this point.

4. This error is based upon the refusal of the court to instruct the jury that if they found the deceased had been in the habit of passing over the defendant's road at the place of the accident, that would justify an inference that he had knowledge of the space between the cars. The evidence discloses that these large cars had been in use from six to twelve months, but there is no evidence that would have warranted the jury in finding how frequently he had been a passenger; and even if he had been a daily passenger there would be no inference that he had knowledge of the space between the cars. He might have been on the cars many times without seeing two of these large cars pass at this dangerous point of the line, and even if the cars had passed he might well have been occupied with other matters and not noticed how close together the cars were in passing. As well might a passenger, in order to be free from a charge of contributory negligence, be required to examine the trucks, including the wheels and brakes, the motor, the car body, the track, the competency of the motorman, and everything pertaining to the operation of the line. A common carrier of passengers in street cars can not shift such burdens upon a passenger. It is the duty of such a carrier to construct its railroad and to use such equipment as will not endanger the safety of its passengers. The fallacy of the proposition advanced by this request to charge is so self-evident that authorities are not required in support of our position that the court did not err in refusing to charge as requested.

5. This error is based upon that portion of the charge which states that "the whole question seems to come to the jury to determine whether or not, under the form of car that was used here, with the width of track that was used here, with the style of open car built as it was, and with this rail in the position it was, there was anything this company ought to have done as a prudent and reasonable person to prevent the happening of an accident of this kind."

We do not think there is any force in the objection raised to this portion of the charge. In this connection it may be said that the charge should be taken as a whole, and when that charge is fair an appellate court should not labor to sustain an objection based upon a sentence which, taken by itself, may not express in the happiest terms a proposition which is correct. We think a fair construction to be placed upon the clause objected to is that the court instructed the jury that it was for it to determine whether the company could have done anything in reference to the form of the car used and the space between the tracks which would have prevented the happening of the accident. Reference in the paragraph is made to the "open car" and to the position of the rail, and the court was correct in leaving it to the jury to determine whether such a car and such a rail were proper under all the circumstances of the case as proven by the testimony. We would not be warranted in sustaining this objection or predicating error upon this portion of the charge.

6. Error is charged because the court instructed the jury as follows:

"But notwithstanding that fact, although the plaintiff's intestate may have been clearly at fault and negligent in putting his arm out, or his head, or whatever it was, yet if the defendant did not take such precautions as a prudent and reasonable person ought to take to prevent such an accident, I think the defendant would be liable."

It is claimed that this statement strikes down the entire doctrine of contributory negligence. It is admitted that the court in giving the seventh instruction asked for by appellant told the jury that if the plaintiff was guilty of contributory negligence, he could not recover although the defendant was found guilty of negligence.

We think the charge of the court on the question of contributory negligence was eminently fair. We think that there is nothing to which the appellant can fairly take exception in the charge, or in the refusal to charge, upon the subject of contributory negligence. Contributory negligence in this case is based upon the contention that the deceased's arm was outside the car. The weight of authorities, as we have before stated, is that this is a question for submission to the jury. Charges much more favorable to a plaintiff have been made in this line of cases and sustained by the appellate tribunals. For example, in Tucker v. Buffalo R. Co., supra, it appeared that the plaintiff sat by one of the open windows of the car with his elbow resting upon the window sill, and the evidence tended to show that it was some three inches outside the line of the car. As the car passed another car going in an opposite direction on the switch, the two cars came close to each other. The court charged the jury, in effect, that the plaintiff might recover, although he was riding with his elbow three inches outside the car and although the cars themselves did not actually collide. The appellate court held that there was no error in this charge.

7. The last error is based upon that part of the charge wherein the court said:

"If the plaintiff's intestate was guilty of negligence, and was in a position of apparent peril, and the employees of the defendant company saw that position of apparent peril in time to have prevented the injury, it was their duty, notwithstanding the negligence of the plaintiff's intestate, to do all they could to prevent the accident. If they, in that condition of

Digitized by Google

affairs, failed to exercise due and proper care the plaintiff may still recover.

"I want to make clear to you the other proposition I stated. Notwithstanding the plaintiff's negligence, if the defendant saw that he was in a position of peril by reason of his own negligence, in time to have prevented the accident, and did not do anything that they ought to have done, he could still be allowed to recover, because the direct result of the negligence of the defendant in that case was the cause of the injury. In other words, a man can not run over another if he sees him in a perilous position, provided he can stop before he does run over him. It is the same way with a railroad company. They could not injure this party if they saw he was there in a perilous position, without undertaking to stop their cars or do something to prevent the accident. If those are the facts, as you find them, the plaintiff may recover."

We think that the general proposition laid down in these paragraphs is a correct one, and that the appellant was not harmed by the statements contained therein. In view of the fact that the court left the question of the contributory negligence of the deceased to the jury and by their verdict it found that the deceased was not guilty of any negligence which contributed to the accident, the charge here objected to amounts to nothing. There was, however, we think, evidence which rendered such instruction proper. The motorman of the approaching car testifies in substance that he saw the deceased, and at least one other passenger, with their arms resting on the rail and that he warned them to take them in. In view of this it was for the jury to determine under proper instructions whether everything was done to prevent the accident. It was for the jury to determine whether everything was done to prevent the accident. It was for the jury to determine whether the motorman, seeing the perilous position of the deceased, should not have endeavored to stop his car. We have said that we believe it was negligence on the part of the appellant not to stop one of the cars when two cars were about to pass at the point where the accident occurred. We have carefully considered the entire charge of the court, and have come to the conclusion that it was eminently fair and that the appellant has no good ground for its insistence that in its instructions to the jury, or in its refusal to give additional instructions, any error was committed.

No error having been committed, it follows that the judgment of the court below should be affirmed, with costs, and it is so ordered.

Affirmed.

Who Are Passengers?

[New York Law Journal.]

Some time since we called attention to decisions that in street railway cases fixed the actual contact with a car, either by taking hold of the hand rail or placing the foot on the step, as the beginning of the relation of passenger (Duchenin v. Boston El. Ry., 71 N. E. 780, and cases cited). The reason for this rule is that persons usually become passengers in street railway cars in the open street, and there must be some definite act to distinguish a passenger from an ordinary pedestrian.

With regard to steam railroads, as passengers are received only at stations, no specific act or acts can be relied on as a criterion. The general principles are stated in the American and English Encyclopedia of Law (2d ed., vol. V, p. 488 et seq), as follows:

"The relation of carrier and passenger begins when one puts himself in the care of the carrier or directly within its control, with the bona fide intention of becoming a passenger, and is accepted as such by the carrier.

Seldom, however, is there any formal act of delivery of the passenger's person into the care of the carrier, or of acceptance by the carrier of one who presents himself for transportation; hence the existence of the relation is commonly to be implied from the circumstances attendant. The rule is that these circumstances must be such as will warrant an implication that one has offered himself to be carried and that the offer has been accepted by the carrier.

The purchase of a ticket by a person entitling him to travel between two stations creates the relation of carrier and passenger with all the duties imposed by law upon each. But it is not necessary that the ticket should have been purchased from the carrier himself or an authorized agent of the carrier. Nor is it necessary that the ticket be actually paid for at the time of his purchase. Yet the actual purchase of a ticket before entering a train is not always necessary to constitute the relation.

While actual entry into the carrier's vehicle of carriage is not always necessary to create the relation of carrier and passenger, and one may become a passenger before entering the car or before transportation has actually commenced, as when he is waiting in the waiting room to take the train or going from the ticket office to take a seat in the car, yet the fact of entering a carrier's vehicle of transportation in good faith to take passage thereon makes one a passenger. A person, therefore, who by mistake gets upon a passenger train other than the one he intended to take passage on is a passenger upon the train he is on.

The actual payment of fare is not essential to the establishment of the relation of carrier and passenger. Nevertheless, the payment of fare to the proper person and receipt of the same constitute unequivocal evidence of the existence of the relation, and unless the payment is either made or waived the fare must sometime be paid or tendered, though it need not be paid in coin or even in money, for any valuable consideration moving from the person to the railway will render him a paying passenger, nor need the fare be paid by the passenger himself in person."

Cases of doubt, whether a person was or was not a passenger, must, of course, turn upon their peculiar facts. The recent decision of the Court of Errors and Appeals of New Jersey, in Vandegrift v. West Jersey, etc., R. R. (March, 1905), 60 Atl. 184, is interesting, as the circumstances rendered it debatable of which of two corporations an injured plaintiff was a passenger. The following is the syllabus by the court:

"One of the plaintiffs entered the ferry house of the Philadelphia & Camden Ferry Company

Digitized by Google

at Philadelphia, intending to purchase a ferry ticket of the company. She had at the time a railroad ticket of the defendant, which entitled her to transportation from Philadelphia to Woodbury, including the ferriage from Philadelphia to Camden. She was injured in the ferry house at Philadelphia, while on her way to the ticket office of the ferry company. She used a ferry ticket to pay her fare across the river, left the station, and went to a point in Camden on a business errand, in pursuance of her intention, before the injury was received. She returned to her home by the street railway. The railroad ticket was afterwards used by her husband. She, however, testified at the trial that she intended to use the railroad ticket in order to cross the ferry.

Held, that she was not a passenger of the railroad company at the time of the injury.

The porter whose negligence is said to have caused the plaintiff's injury testified that he was paid by the check of the defendant, but immediately added that he forgot whether it was the railroad or not. There was positive testimony, which was sustained by circumstances, that he was an employee of the ferry company. Held, that his testimony that he was paid by the railroad company was too uncertain to justify the conclusion that he was an employee of the railroad company."

The facts are elaborately discussed in the opinion.

National Bank—Debts—Comptroller.

The United States Circuit Court of Appeals for the Eighth Circuit held, in the case of Deweese v. Smith, that the decision of the Comptroller of the Currency that it is necessary to collect, and his requisition for, a certain percentage of the liability of the shareholders of a national bank in order to pay its debts, is not a decision that a larger percentage will not be necessary, and that the comptroller has plenary power to make successive assessments until the full liability of the shareholder is exhausted.

Stockholder's Liability—Transfer.

The United States Circuit Court for the Middle District of Pennsylvania held in the recent case of The Knickerbocker Trust Company vs. Myers, that a stockholder in a corporation can not avoid his statutory liability to a creditor on account of stock which he sold prior to the creation of the debt where he neglected to have the stock transferred on the books of the company as required by its rules and the terms of his certificate.

Bank; Draft; Collection; Insolvency.

The United States Circuit Court of Appeals for the Fifth Circuit held, in the case of The Western German Bank v. Norvell, that a bank which, although known by its officers to be insolvent, received a draft for collection without disclosing its insolvency to the owner, collected the same and mingled the proceeds with its own funds, remitting to the owner its own draft, which was not received until after the bank was placed in the hands of a receiver, was guilty of fraud; that the proceeds of the draft, when collected, remained the property of the sender and might be recovered from the receiver where they could be traced into his hands, and that such right was not affected by the fact that the sender gave directions that the remittance should be made in New York exchange, which was done, the exchange being protested and never paid.

The supreme lodge of a mutual benefit society which has authorized its agent, a local lodge, to initiate members into the order, is held, in Mitchell v. Leech (S. C.), 66 L. R. A. 723, to be liable for injuries inflicted upon a candidate by the use of a mechanical goat in the initiation ceremony, although it has not authorized the use of such contrivance.

As between successive assignments of a fund in the hands of a third person, the one which, being acquired without notice of prior ones, is first brought to the knowledge of the depositary, is held in Re Phillips (Pa.), 66 L. R. A. 760, to be entitled to priority. Priority rights of different assignees of fund in hands of third person is the subject of a note to this case.

Criticism of the manner in which trials are conducted in court is held, in Ex parte Green (Tex. Crim. App.), 66 L. R. A. 727, not to be punishable as a contempt of the court, unless it refers to some particular case pending before the court.

A real estate broker is held, in Cadigan v. Crabtree (Mass.), 66 L. R. A. 982, not to be entitled to a commission, where, after having produced a customer willing to negotiate for the lease which he was employed to effect, the principal in good faith decides not to lease, terminates the negotiation, and discharges the broker, although the principal subsequently again decides to lease and makes a contract with the customer produced by the broker.

Holders of stock in a corporation, the property of which has been sold, are held, in Hearst v. Putnam Min. Co. (Utah), 66 L. R. A. 784, to have no right to maintain a suit so enforce a trust in such property for their own benefit on the theory that the directors of the company were guilty of fraud in disposing of it.

The right of an ancillary administrator, who has been compelled to pay a debt against the estate after he has, in ignorance thereof, turned over the assets in his hands to the principal administrator, to proceed against one only of the distributees for reimbursement, is sustained, in McClung v. Sieg (W. Va.), 66 L. R. A. 884, where the distributees are all non-residents and she is the only one who has property within the State subject to the jurisdiction of the court

Digitized by Google

The use of streets and sidewalks by an individual simply for his own convenience and accommodation is held, in O'Hanlin v. Carter Oil Co. (W. Va.), 66 L. R. A. 893, to be unauthorized and essentially a nuisance, and to make such individual liable for all damages sustained in consequence of the improper appropriation of the street or sidewalk to his own personal use.

NEW EDITION NOW READY

Collier on Bankruptcy

FIFTH EDITION, 1905

Sheep, 1084 Pages, $6.30.

MATTHEW BENDER & CO.

Law Publishers Albany, N. Y.

1657

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Stuart McNamara, Solicitor

In the Supreme Court of the District of Columbia.

Irene Jones, Petitioner, v. Don Jones and Gertrude Thompson, alias Gertrude Prall, Defendants.

No. 24,496. Equity Docket No. 54.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, Don Jones, on the ground of adultery. On motion of the complainant, it is, this 14th day of April, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

Legal Notices.

H. D. Gordon, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel M. Whitside**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. CARRIE M. WHITSIDE, Bethesda, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,633. Administration. 17-3t

J. Harry Smith, Atttorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Silas J. Beckley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. HOWARD BECKLEY, 2519 M st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,878. Administration. 17-3t

Charles S. Muir, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Ellen Flynn, Deceased.

No. 12,841. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Isaac H. Saunders, it is ordered this 27th day of April, A. D. 1905, that notice be and hereby is given to the unknown next of kin and heirs at law of said Ellen Flynn, and to all others concerned, to appear in said court on **Monday, the 29th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest. Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

L. H. Pool, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles G. Thorn**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. AMANDA J. THORN, 1821 Baltimore street. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,845. Administration. 17-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles C. Cole**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. R. GOLDEN DONALDSON, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,849. Administration. 17-3t

Wm. L. Browning, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John Stewart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. WILLIAM L. BROWNING Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,843. Administration. 17-3t

Millan & Smith, Solicitors

In the Supreme Court of the District of Columbia.
Mary C. Avery et al. v. James M. Bennett et al.
Equity No. 24,183.

Upon consideration of the report of William W. Millan and W. Mosby Williams, trustees, herein filed, showing that they have sold lot eight (8) in square thirty-five (35) in the city of Washington, District of Columbia, to Mary C. Avery and Rebecca J. Bennett, for twenty-four (24) cents a square foot, it is this 24th day of April, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of May, A. D. 1905.** Provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

John M. George, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Charles B. Hinton, Deceased.
Administration No. 12,840.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by **Elizabeth Hoeke**, it is ordered this 24th day of April, A. D. 1905, that notice be and is hereby given to **Charles P. Hinton**, and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Susan E. Detrick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1905. EDWARD H. THOMAS, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 17-3t

Legal Notices.

Marion T. Clinkscales, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Ada Comfort et al., Complainants, vs. Henry Willis, Defendant. Equity No. 24,942. Docket No. 55.

ORDER CONFIRMING TRUSTEE'S SALE NISI.

Marion T. Clinkscales, trustee in the above-entitled cause, having reported the sale of the south one-half of lot numbered nine (9), in square numbered ten hundred and sixty-nine (1069), together with the improvements thereon, to **Charles E. Harris, at and for the sum of** seven hundred and seventy-five ($775), it is this 24th day of April, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the **24th day of May, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Theodore M. Rudd**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 15th day of May, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,007. Administration. 17-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Winnie S. Simpson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. MAUD E. CHAPMAN, 10 Summer ave., Anacostia, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,805. Administration. 17-3t

Erskine Gordon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Eli E. Kirby, Deceased.
No. 12,835. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Evander French, it is ordered, this 26th day of April, A. D. 1905, that notice be and hereby is given to **George H. Kirby, Charles B. Kirby, and the unknown next of kin of Eli E. Kirby, deceased**, and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day and at least three times in some daily newspaper in Burlington, Vermont. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

Robert H. Martin, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles E. Persons**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. AGNES ELIZABETH PERSONS, 641 F st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,831. Administration. 17-3t

Geo. Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward R. Morcoe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ROBERT M. MORRISON, 617 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,862. Administration. 17-3t

Stuart McNamara, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Patrick Danaher**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, **appointed Thursday, the 11th day of May, 1905, at 11 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of April, 1905. DANIEL E. DANAHER, Executor, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,981. Administration. 17-3t

Edward S. Bailey, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Urban Gebhart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of October, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ELIZABETH GEBHART, by Edward S. Bailey, her Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,364. Administration. 17-3t

James Hamilton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **LeRhett L. Livingston**, late of the United States Army, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. MARY EATON LIVINGSTON, Room 806, Wash. Loan & Trust Bldg., care of James Hamilton. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,423. Administration. 17-3t

Legal Notices.

D. W. Baker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clara P. Bateman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. FRANCIS E. BROCKWAY, 202 A st. S. E.; CHARLES A. KRAM, Wash. Loan & Trust Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,865. Administration. 17-3t

R. M. Parker, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Nancy D. Bishop, Deceased.
No. 10,782.

Samuel S. Yoder, executor herein, having reported to the court that he has received an offer to purchase sublot seventeen (17) in square No. sixty (60), in the city of Washington, District of Columbia, for the sum of $800.00 cash, of which the sum of $50.00 has been paid and the balance to be paid on final ratification of sale, and also an offer to purchase lot eighteen (18) in square No. seven hundred and fifty-eight (758), of the said city and District, as described in the proceedings herein for the sum of $5,150.00 cash, of which the sum of $200.00 has been paid, the balance to be paid on final ratification of sale. It is, this 25th day of April, 1905, ordered that said offers be accepted and said sales be ratified and confirmed, unless cause to the contrary be shown on or before the **19th day of May, 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

Wm. G. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bernard H. Johnston, Deceased.
No. 12,786. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James M. Johnston and William G. Johnson, it is ordered, this 20th day of April, A. D. 1905, that notice be and hereby is given to **Violet Johnston**, a minor, and to all others concerned, to appear in said court on **Wednesday, the 24th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

William L. Elterich, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna Maria Fleischhauer, Deceased.
No. 12,815. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julius Th. Fleischhauer and Edith M. Phoelus, it is ordered this 20th day of April, A. D. 1905, that notice be and hereby is given to **Rosa Schultz, nee Fleischhauer, in Kimberly G. W., South Africa**, and to all others concerned, to appear in said court on **Tuesday, the 23d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

Digitized by Google

Legal Notices.

Enoch L. White, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Jane Thumlert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. E. L. WHITE, Pacific Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,833. Administration. 17-3t

SECOND INSERTION.

In the Supreme Court of the District of Columbia
Holding an Equity Court.
William H. McCaffrey et al. v. Lizzie C. Manogue.
In Equity, No. 22,346.

Upon consideration of the report of Henry F. Woodard, Orrin B. Hallam, and Edwin Forrest, trustees, filed herein on the 20th day of April, 1905, stating that they have sold the property described in said report and in these proceedings, to wit, the north 87½ feet, more or less, of lot 20, in square 841, to Richard M. Little for the sum of $9,350.00, it is, by the court, this 20th day of April, A. D. 1905, ordered, adjudged, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **8th day of May, A. D. 1905**. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. By the Court: THOS. H. ANDERSON, Justice. A True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

Wilson & Barksdale, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Walter F. Rodrick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. A. CARTY RODRICK, C. BURTON RODRICK, 101 Fifth st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,858. Administration. 16-3t

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Reinhardt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. HENRY K. BROWN, 326 Pa. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,838. Administration. 16-3t

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Pius Stang**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of April, 1905. CARL HAMMEL, 459 D st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,722. Administration. 16-3t

Legal Notices.

Birney & Woodard, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Green**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of April, 1905. JOHN A. GARVER, 44 Wall st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,636. Administration. 16-3t

Anson S. Taylor, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry L. Biscoe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. GEORGE W. WHITE, 1401 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,863. Administration. 16-3t

THIRD INSERTION.

George E. Fleming, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eliza B. Anderson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. MARIA L. ANDERSON, SOPHIE C. ANDERSON, 1527 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,810. Administration. 15-3t

Nelson Wilson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Len For Moy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. HENRY M. KINGSLEY, 516 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,828. Administration. 15-3t

Jas. B. Archer, Jr., Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Carrie Warren**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. LOUIS F. ZELTMAN, 1800 Orleans st., Balto., Md.; WILLIAM ZELTMAN, 1215 N. Chester st., Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,816. Administration. 15-3t

Digitized by Google

Legal Notices.

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William C. Dix**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. FRANK P. DAVIS, 1456 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,712. Administration. 15-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph W. Parish**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1905. EMILY E. PARISH, 217 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,677. Administration. 15-3t

J. Harry Smith, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James H. Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. MARGARET T. LEWIS, 927 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,830. Administration. 15-3t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Anthony Hanlon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. JOHN A. HEENAN, 1237 32d st. N. W; ARTHUR SMALL, 2918 M st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,627. Administration. 15-3t

Henry C. Stewart, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eleanor J. Cooper**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of April, 1905. JAMES M. GREEN, 1336 New York ave.; WM. E. TUTTLE, Westfield, N. J.; ARTHUR D. TUTTLE, Westfield, N. J. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,490. Administration. 15-3t

Legal Notices.

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick D. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1905. KATHERINE B. SULLIVAN, 428 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,644. Administration. 15-3t

I. S. Lyon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Joseph H. Aukward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. GEORGE H. AUKWARD, 128 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,837. Administration. 15-3t

Albert Sillers and W. H. Green, Solicitors

In the Supreme Court of the District of Columbia.

William H. Ward vs. Mollie J. Ward and John Vaughn. No. 25,076. Equity Docket No. 56.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of the adultery on the part of the defendant Mollie J. Ward with the corespondent John Vaughn. On motion of the complainant, it is this 5th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 15-3t

Hamilton & Colbert, Solicitors

In the Supeme Court of the District of Columbia.

Minnie Kensington v. Naomi Kensington, younger; Stephen Kensington, Priscilla Kensington, Henry Kensington, the younger; William Kensington, the younger, et al. No. 25,190. Equity Docket No. 56.

The object of this suit is to have sale made, under the provisions of section 100 of the Code, of house 406 Mass. ave. N. W., described as follows: Part of original lot one in square five hundred and seventeen, beginning for same on Mass. ave. 58 feet from northeast corner of said square; thence westwardly on Mass. ave. 18 feet; thence at right angles with said avenue 13 feet; thence south 34 feet to H street; thence east 13 feet 8 inches; thence north 21 feet; thence northeastwardly 20 feet to beginning. Also houses 616, 618, and 620 North Capitol street, described as follows: The south 7 feet front on North Capitol street of lot 38 by the full depth of said lot and all of lots 39, 40, and 41, in Joseph Cabot's subdivision in square 625, as per plat in liber U. K., folio 273, of the records in the office of the surveyor of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainant, it is, this 11th day of April, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-3t

Digitized by Google

Legal Notices.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel L. Denty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of April, 1905. BENJ. F. LEIGHTON, C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,821. Adm. 15-3t

---

Thompson & Laskey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Volney Pursell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of April, 1905. ROSE PURSELL, 412 N. J. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,813. Administration. 15-3t

---

I. J. Costigan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Abbie B. Clark, Deceased.
No. 12,826. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, it is ordered this 7th day of April, A. D. 1905, that notice be and hereby is given to **William E. Clark**, of Dallas, Texas, and to all others concerned, to appear in said court on **Wednesday, the 10th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

---

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer**, deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Legal Notices.

Emory H. Bogley, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re the Estate of Indridge Hearns, Deceased.
No. 12,414. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of Indridge Hearns, by James W. Hearns, the named executor in the said last will and testament, it is ordered this 10th day of April, 1905, that notice be and is hereby given to **Richard Hearns, James Hearns**, both residing somewhere in the State of Virginia; **Bernard Smith, Richard J. Smith, Sarah S. Murphy, John A. Crowner, Henry R. Crowner, Martha Crowner, and Sarah B. Smith**, all residing at some unknown address or addresses in the District of Columbia, and to all others concerned, to appear in said court **Monday, the 15th day of May, 1905, at 10 o'clock A. M.**, to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and the Evening Star newspaper once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 15-3t

---

J. McD. Carrington, Solicitor

In the Supreme Court of the District of Columbia.

Mary Elizabeth Lane v. William Lane, Respondent; Florence Corbin, Corespondent. No. 23,876. Equity Docket No. 58.

The object of this suit is to obtain an absolute divorce on the ground of adultery, provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. On motion of the complainant, by James McDowell Carrington, her attorney, it is this 7th day of October, A. D. 1904, ordered that the corespondent, **Florence Corbin**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-3t

---

EIGHTH INSERTION.

Saml. Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Samuel A. Drury and Samuel Maddox, Substituted Trustees, Complainants, v. The Unknown Heirs, Alienees, and Devisees of William H. Parker, Defendants. In Equity, No. 25,178.

The object of this suit is to declare the title of complainants to lots fifteen (15), twenty-two (22), and twenty-three (23), in James H. Meriwether's subdivision of lots in square numbered three hundred and four (304), in the city of Washington, District of Columbia, as said subdivision is recorded in liber twenty (20), folio one (1), of the records in the office of the surveyor of said District, to be good in fee simple in the complainants by adverse possession. Upon motion of the complainants, by their solicitor, it is this eighth day of March, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of said **William H. Parker**, deceased, cause their appearance to be made herein on the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order shall be published in The Washington Law Reporter four (4) times during the current month of March and in each issue of said Reporter during the month of April, 1905, the court being satisfied upon good cause shown by the bill and affidavit, filed in this cause, that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-8t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 18

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MAY 5, 1905

CONTENTS.

Editorial 273
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA: Alice M. Patterson, appellant, v. The Ocean Accident and Guarantee Corporation 274
Legal Notices 284

THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Wills; Construction of Devise in Trust.

In Cruit v. Owen, the proceeding was to construe a will. By the will the real estate of the testator was left in trust for his wife during her life, and on her death in trust for four daughters, share and share alike, for their lives, and from and after the death of the daughters in trust for the child or children of each of the daughters then living, "such child or children to take the share to which his, her, or their parent was entitled." One daughter died prior to the mother, unmarried and childless, and the mother died in 1876. Subsequently two other of the daughters died, one leaving three children, and the other unmarried and childless. The court below held that the three children of the deceased daughter were entitled to one-half the revenues of the estate during the life of their aunt, and to the equitable title in remainder in the property, subject to the rights of any child or children of the aunt, who during her life was entitled to the remaining one-half of the revenues of the estate. The decree is affirmed in an opinion by Mr. Justice Duell.

Deeds; Cancellation; Fraud; Consideration.

In Slater v. Rudderforth et al., the suit was to cancel deeds to certain real estate in this District, and for a reconveyance thereof to complainants. The complainants alleged that the deed had been procured from them during their minority by fraud practiced upon them and upon their mother, who had a life estate in the premises, by one of the defendants; that no consideration had been paid them for the deed, and that upon coming of age they had repudiated and disaffirmed the deed. The court below decided in favor of the complainants, and the decree is affirmed in an opinion by Mr. Justice Morris.

Unincorporated Joint Stock Company; Partnership; Withdrawal of Partner; Husband and Wife as Partners.

In Norwood v. Francis, the appeal was from a judgment entered upon a verdict directed by the court in an action by a depositor in a bank conducted by an unincorporated joint stock company whose members were therefore liable as partners. The action was against two persons, alleged to have been stockholders in the company. As to one of them, it was held that he had relieved himself from liability by withdrawing from the company some years before the deposit was made. As to the other defendant, it appeared she was a married woman, and that her husband was also a stockholder in the company; and it was held that, in the absence of specific statutory authority, a wife can not be a member with her husband of a partnership such as the one in question, and that therefore she was not liable. The opinion of the court is by Mr. Justice Duell.

Resulting Trust; Parol Agreement; Statute of Frauds.

In McIntosh v. Green, the appeal was from a decree dismissing a bill to declare a trust in certain lands, and for a conveyance of the legal title. The trial court held that no foundation was shown upon which to raise a resulting trust, and that the case resolved itself into an attempt to establish an express trust by parol, which was prohibited by the statute of frauds. The Court of Appeals affirms the decree, in an opinion by Mr. Chief Justice Shepard.

Will; Bequest to Wife Held Absolute.

In Montgomery v. Brown et al., the suit was to construe a will. By one clause of the will testator gave all his real estate to his wife for life, with power to mortgage it should her circumstances require it. By a separate clause he bequeathed her his life insurance and all other property not otherwise disposed of. By another clause it was provided that at the death of his wife all his property, real, personal, and mixed, should go to his brother. The controversy was as to whether the gift to the brother included the life insurance, it appearing that at the death of the wife she had in her possession certain notes representing the proceeds of the policy. The trial court held that the gift of the insurance money to the wife was absolute, and its decree is affirmed in an opinion by Mr. Justice Duell.

Justice of the Peace; Appeal Bond; Mandamus.

In Bundy v. U. S. ex rel. Darling, the appeal was from an order of the court below directing the issue of a writ of mandamus to compel the respondent, a justice of the peace, to pass upon

Digitized by Google

the sufficiency of an appeal bond. It appeared that the notice of appeal gave the name of the "Title Guaranty and Trust Company" as surety, but omitted the words "of Scranton, Pennsylvania," which form part of its corporate name. The justice of the peace held the notice insufficient and declined to approve the bond. Thereupon the appellant applied for and obtained the writ of mandamus. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the order directing the issue of the writ. Several interesting questions in reference to the rules regulating appeals from justices of the peace are referred to in the opinion.

Principal and Agent; Payment to Agent.

In Held v. Walker, the appeal was from a judgment upon a verdict directed for defendant in a case appealed from a justice of the peace. The question involved was whether the defendant was justified in making payment to an agent who, it appeared, had failed to pay the money over to the principal. The case was tried before a jury, and there being a conflict in the evidence on the point, the court holds that it should have been submitted to the jury. The opinion was delivered by Mr. Justice Morris.

Physicians; Conviction of Unprofessional Conduct Reversed.

In the case of Czarra v. Board of Medical Supervisors, a finding by the board that the appellant was guilty of unprofessional conduct and revoking his license as a physician, is reversed, in an opinion by Mr. Chief Justice Shepard. The court holds that Congress has power to regulate the practice of medicine and surgery in the District of Columbia, and to define what shall constitute unprofessional or dishonorable conduct, but that the act of Congress, under which the prosecution was brought, fails to do so, and is therefore void for uncertainty. This is the second appeal in this case, that on the former appeal being reported in 32 Wash. Law Rep. 744.

Divorce; Evidence Held Insufficient.

In Michalowicz v. Michalowicz, the appeal was from an order of the court below dismissing a bill for divorce. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the bill was rightly dismissed, for the reason that the evidence was insufficient to justify a decree of divorce.

Assault and Battery; Judgment Affirmed.

In Hubbard v. Perlie, the appeal was from a judgment of the court below in an action for assault and battery. The Court of Appeals holds that no error was committed by the trial court, and affirms the judgment, in an opinion by Mr. Chief Justice Shepard.

Court of Appeals of the District of Columbia.

ALICE M. PATTERSON, APPELLANT,

v.

THE OCEAN ACCIDENT AND GUARANTEE CORPORATION.

Accident Insurance; Evidence; Res Gestæ; Proximate Cause; Interpretation of Policy; Examination of Body of Assured.

1. In an action upon a policy of accident insurance, declarations by the assured, an osteopathist, made shortly after the accident, tending to show that he was then suffering severe bodily pain and had sustained an accidental strain in the treatment of a patient, are admissible in evidence as part of the res gestæ.
2. Statements by the assured to his attending physician, made the day after the accident, tending to show his bodily pain, the particular location of the same, and the symptoms of his malady, are admissible in evidence; but his statement then made tending to show that he had received a strain the day before to which he attributed his condition, are properly excluded as not being part of the res gestæ.
3. The rule in ordinary cases is that what is the proximate cause of an injury is generally a question of fact for the jury, to be determined as a fact in view of all the circumstances of fact attending it.
4. A strain received in the ordinary course of the assured's business is an accident within the meaning of a policy insuring "against accidental bodily injuries caused, solely, . . . by external, violent, and visible means, which shall independently of all other causes disable the assured."
5. In the interpretation of contracts of insurance, in cases of doubt that interpretation is to be given which favors the insured rather than the insurer.
6. A policy insuring "against accidental bodily injuries caused solely by external, violent, and visible means, which shall independently of all other causes disable the assured," and providing that if death result "as the actual and direct cause" of such bodily inquiries, a certain sum should be paid, construed, and held not to mean that there should be no recovery where there was a pre-existing diseased condition of the body, notwithstanding the accidental injury may have been the exciting, efficient, predominant cause of death; but to mean only that the intervening accident must be the proximate, direct cause of death.
7. In an action on such a policy, it clearly appeared the assured, an osteopathist, had sustained an accidental strain while treating a patient which gave him severe bodily pain and caused the cessation of his labors; that prior thereto he had been a strong and apparently healthy man; that he continued to suffer great pain in the same parts of his body until his death about ten days thereafter; and there was some evidence tending to show that the accidental strain had caused the rupture of some ligaments or tissue connected with the liver, or the rupture of the gall bladder or bile duct, thereby becoming the actual, efficient cause of the death of the assured. *Held*, that the question whether the death was accidental was for the jury, and the trial court erred in directing a verdict for defendant.
8. A provision of the policy giving the medical adviser of the insurer the right to examine the body of the assured held not to include the right of autopsy or dissection of the body, much less exhumation for that purpose; but a refusal to permit an examination of the body, upon demand made at a reasonable time and place before burial, would bar recovery on the policy.

No. 1481. Decided February 8, 1905.

Appeal by plaintiff from a judgment of the Supreme Court of the District of Columbia, at law, No. 45,752, entered upon a verdict directed by the court in an action upon a policy of accident insurance.

Mr. A. A. Hoehling, Jr., and *Mr. H. F. Woodard* for the appellant.

Mr. Geo. E. Hamilton and *Mr. M. J. Colbert* for the appellee.

Digitized by Google

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was brought by Alice M. Patterson against the Ocean Accident and Guarantee Corporation, Limited, of London, England, upon a contract of accident insurance made with Henry E. Patterson.

The declaration alleged the issue of the policy by the defendant to Henry E. Patterson June 14, 1901, insuring him for one year against accidental bodily injuries; that in consideration of the premium paid, the defendant promised, in the event of accidental bodily injuries resulting in the death of said Henry E. Patterson, to pay $5,000 to the plaintiff, Alice M. Patterson; that said Henry E. Patterson received an accidental strain on March 28, 1902, which caused his death on April 10, 1902; that due proof of loss has been made as required, and that defendant had refused to pay the sum so promised.

The defendant, among other pleas in bar of the accident, pleaded in substance that the injury alleged was not the cause of the death of the insured; that notice of the injury had not been given as required by the conditions of the policy; and that defendant's right to examine the body of the insured, as stipulated in the policy, had been denied. Demurrer to these pleas was sustained and issue was joined on plea of non assumpsit.

The policy was introduced in evidence. It bears date June 14, 1901, and recites that in consideration of the warranties set forth therein and the receipt of $25, the defendant insures Henry E. Patterson, for the term of one year, "against accidental bodily injuries caused solely, during the term of this insurance, . . . by external, violent, and visible means, which shall, independently of all other causes, disable the assured as follows: A. If death shall result in ninety days from date of such bodily injuries, as the actual and direct cause thereof, the corporation will pay the principal sum of five thousand dollars ($5,000) to Alice M. Patterson if surviving.' . . .

The policy is lengthy, containing many provisions, conditions, and exceptions, and only those having some possible bearing on the issues of the case will be set forth.

Section 10, article J, provides that: "Any medical adviser of the corporation shall have the right and opportunity, as often as he may require, to examine the person or body of the assured in respect to alleged injury or cause of death, and any refusal on the part of the assured, or of the beneficiary, or of the legal representatives of the assured, to comply with this provision shall operate to defeat the policy."

Clause 13 of the warranty section reads: "My hearing or vision is not impaired; I have never had, nor am I subject to, fits, diseases of the brain, or other mental or bodily infirmities except as herein stated." No special form of application for insurance seems to have been required, but in the warranty section certain facts are written down as statements of the assured, including clause 13, aforesaid.

The plaintiff Alice M. Patterson was the wife of the assured.

Dr. Wilber Lee Smith, a brother of the plaintiff, testified to the following facts: Both he and Henry E. Patterson were osteopathists and practiced together. He had known Patterson intimately for twenty years. Patterson was 42 years old, 5 feet 11 inches tall, and weighed 180 pounds. His figure was erect and he was strong and vigorous. Prior to 1897 he had not suffered from illness. In that year he had what was thought to be a case of intestinal obstruction and due to excessive eating of strawberries. He had no illness from that time to his last one that caused him to remain away from his office, but had an occasional ailment, such as headache or indigestion. He had practiced osteopathy since 1892 or 1893. The practice of osteopathy consists in manipulating the body, and requires muscular strength. On March 28, 1902, he was treating patients, and about 1 p. m. came out of the treating room. He had his hand on his back, and meeting witness in the hall, said he had strained himself and was suffering great pain. He went into one of the treating rooms and took off his coat and vest, and witness examined him and gave him a gentle manipulation. He did not say when it occurred, but witness had seen him about a half an hour before and he then gave no indications of pain. Witness could feel a contraction of the muscles between the seventh and ninth dorsal vertebræ. Manipulation being painful, witness applied a hot-water bottle, which gave temporary relief. He stayed at the office until about 4 p. m., when he went home. Witness saw him again the next afternoon. Dr. George H. Lee attended him. He complained of grinding pains in the back that extended around the abdomen. He was suffering greatly. Saw him every day until his death, April 10, 1902, about 1.25 a. m. On cross-examination, witness said that assured had a policy in the Mutual Life Insurance Company; that he had made an affidavit in the matter of that claim and stated the cause of death as inflammation of the liver—hepatitis. Stated in that affidavit also that he had suffered an injury on February 20, 1902. He did have an accident at that time, but it did not incapacitate him; he did not lose a day from his office. Did not see the accident, but he told me he had strained his back in raising a window. Examined him, treated his back by manipulation, and found evidence of a strain. Dr. Patterson had treated eight or nine patients on March 28, but did not say which one he was treating when he received the strain. An injury to the muscles of the back can not affect the liver, except that wrenching of the back could strain the liver. It might rupture a ligament of the liver. Have read where a strain of the body can produce liver trouble. The only exterior sign visible was some injury to the muscles. There is no muscular tissue in the liver or connected with it, but there are ligaments in the liver. They do not form a part of the liver, but support it, and when these are strained it is called a strain of the liver. The contraction of the muscles noticed might have been produced by a variety of causes, but did not think it was.

Dr. George H. Lee was the next witness. Said he was a homeopathic physician and had been in practice since 1876. Visited the assured twice on March 29, 1902. Found him suffering severe pain in the epigastrium and diaphragm apparently, and all that part of the body involving

Digitized by Google

the diaphragm, the epigastrium, and the liver. The pain was in the region of the abdomen, the right side and the back. Conditions were the same morning and evening. He made statements to the witness as to the cause of his injuries, but on objection of the defendant he was not permitted to repeat them. To this exclusion the plaintiff excepted. The patient said the pains were severe, and witness was guided by what seemed to be his condition, the character of the pains and their locality; of course one is controlled some by the history of the case. Called on next day and found him worse; he had a chill at 5 p. m., and spent the night with him. He was then suffering from hepatitis, with signs of jaundice, and the pain had become localized about the liver. At 8 next day he had another chill with continued pain and rise of pulse and temperature. The symptoms became more severe and he died early in the morning of April 10. The remainder of witness' evidence is recited in the bill of exceptions as follows:

"Q. Doctor, what in your opinion was the starting, procuring, or proximate cause of the illness which resulted in Dr. Patterson's death?

"The Court: Judging just from the symptoms you found when you first saw him and the symptoms he had during the whole of his sickness up to the time of his death, you can base your opinion as to what you suppose was the cause of that condition, as a medical man and an expert you have some opinion; you can form some opinion from those circumstances, and that you can give. Leave out of your mind anything that he said. Suppose he had not said anything to you at all, as to how he got hurt, or whether he had been hurt at all or not, and you took the man just as he was and followed him down to his death. What could you form in your own mind as to the cause of that condition or trouble?

"A. If he had not told me anything at all, of course I should have cast about in my mind for some probable cause, and perhaps could have found it, and should simply have accepted the fact that he was in that condition——

"The Court: What probable cause would have started that condition of affairs?

"A. There are two or three that could have caused that condition of affairs—hepatitis may come on from a bilious condition of the system, and the first a man knows is that he has it; he does not know how it comes. If a person has had anything in the nature of an injury we naturally refer to that as being the probable cause.

"Another cause that might be explanatory of the symptoms that he had, was gall stone—he might have had gall stones or he might have had a rupture. I mean gall stones from the liver, or as we call them, biliary calculi and not vesical calculi, which pertain to the bladder, or he might have had a rupture of the gall bladder. If such was the case it would probably come from an accident of some sort, but it would not be likely to occur unless the patient was in a predisposed condition. It would not be likely to occur in a perfectly well man. If a man is physically well, but who is afflicted with gall stones, it is possible that a strain or wrench would produce rupture of the gall bladder. Gall stones may be of various sizes. It would be possible to precipitate the gall stone into the gall duct by reason of a sudden strain or wrench. It often happens that people having gall stones go through life without suffering any from them, as they may remain in the gall bladder indefinitely without making any serious difficulty. I do not know positively that the patient had gall stones, as that could only be ascertained by an autopsy. I suspected gall stones, and kept a lookout for them, as the symptoms suggested it. There were various symptoms to suggest gall stones. My treatment was in part directed to getting rid of the stone, if one might be in the common duct, and I gave him remedies to act on the liver and gall bladder, and to cause the stone, if one was there, to move along, which finally produced quite free evacuations, but I did not find a stone.

"Q. Doctor, considering all the pathological conditions and symptoms of Dr. Patterson from the time you first saw him until his death, state whether or not, in your opinion, his death may have been the result of strain, or rupture of the gall bladder, ligaments, or of the liver itself? A. I do not know that I can answer the question in that form; if you mean rupture of the liver you will have to strike that out.

"Q. Well, as to the other two, striking out the reference to the liver. A. That would not be probable.

"Q. May not strain have resulted in rupture of the gall bladder and ligaments? A. Strain might result in rupture of the gall bladder. Yes, that might occur; but I would hardly expect that death would result from rupture of the ligaments or of the liver, but it might result from rupture of the gall bladder.

"On cross-examination witness said:

"The first time I saw Dr. Patterson was on March 29, 1902, at which time I found no evidence of external injury. There was no discoloration and no condition of the muscles to indicate injury. There were no objective signs of any injury. In Dr. Patterson's case there was undoubtedly a complication, as he had inflammation of the liver; he may have had gall stones, but that could only be determined definitely by an autopsy. I suspected them, and looked for them, but did not find them, but you can not always tell definitely about such things without an autopsy. A gall stone may have been impacted in the duct, and in that event it could not be discovered except by autopsy. There was inflammation of the liver, there was hepatitis, and there may have been gall stones, and there may have been rupture of the gall bladder. There were signs that this might have occurred, but could not be determined definitely without an autopsy. Mrs. Patterson, being overcome with grief, declined to permit an autopsy, and therefore, being uncertain whether there were gall stones or rupture of the gall bladder, I made out the death certificate as hepatitis because that was the only thing I could be confident of. Hepatitis means inflammation of the liver. There may be various causes for it. Hepatitis is acute or chronic. Chronic hepatitis is slow and acute hepatitis may be very rapid. It is sometimes accompanied by acute pain, but not always.

Digitized by Google

Inflammation of the liver of itself could not ordinarily and directly be produced by a strain of the muscles of the back. I never knew of a simple stretching of the muscles of the back to produce inflammation of the liver, nor would I expect it to occur in a man of Dr. Patterson's physique from a wrench received while rubbing a patient, but I would not say that it could not occur.

"I do know of a case where inflammation of the liver was brought on by a strain of the external muscles of the back. It is a case which happened to myself. I was riding in a gig, one of these high, two-wheeled gigs that doctors used to ride on in the country. I was riding over a muddy road with deep ruts in it, when one wheel went down and I received a wrench and a twist which hurt me. I felt a pain in there then, but I did not think any more about it. I didn't know anything was the matter with me; but next morning when I got up out of bed and stood on my feet a pain caught me in my liver so terrible that I fell back on the bed, either fainting or almost fainting. It was very severe, and from that time I had hepatitis. I had inflammation of the liver. I suppose that is the way I got it. I presume I was in a bilious condition. If I had been perfectly well, I don't suppose it would have hurt me.

"In the course of my practice in reading I have never heard of such a case. Simply by manipulating a patient he would not be likely to produce a strain that could cause hepatitis, but I would not say that it could not occur. I can not explain how a muscular strain between the seventh and ninth dorsal vertebræ could carry inflammation to a healthy liver, and if such a result did follow I should say that the man's liver was not in a healthy condition, and that he was predisposed to disease. If the gall bladder were ruptured syptoms would probably be jaundice, and there would be acute pain and a rise of temperature. There would be symptons pointing unmistakably to the hepatic region. If it were ruptured so as to let out the contents into the peritoneal cavity it would cause peritonitis, which would come on very quickly. Gall stones may be precipitated without the patient having suffered any accident at all, as the physiological action of the gall bladder is to expel a stone, and when expelled, the stone proceeds through the common duct to the duodenum. These stones sometimes, when expelled, become impacted in the duct and can not move, the result being that the patient succumbs to the conditions that follow, such as jaundice, pain, and severe sickness. They would be very much the same symptoms as Dr. Patterson manifested, and that condition might have caused his death.

"When a stone becomes impacted in the duct the normal functions are prevented from being carried on. Fearing such might be the case I proposed to Dr. Patterson a surgical operation, but he objected so strenuously that I did not press the subject. I proposed a consultation, but it was not desired by the patient.

"In my report of this death to the insurance company I stated as a history of the disease from first to last 'acute hepatitis. He was violently ill when I was called to see him, with pain, fever, rigor, failing strength, and coma.'

"I also stated in my certificate that the diaphragm, stomach, and other adjacent parts were more or less involved secondarily; that is, sympathetically.

"The inflammation of the liver, which I found existing in Dr. Patterson, might have been produced by several causes, as before stated, and any one of those causes might have caused his death.

"I made a request for an autopsy to satisfy myself of the real trouble, and I heard that the insurance company also suggested an autopsy.

"On redirect-examination witness said: It is a fact that a rupture of the bladder might have been the result of a strain, wrench, and that sometimes gall stones remain in the gall bladder inactive for quite a long time, and they are sometimes precipitated by external forces of some kind. If the stone was too large to pass through the common duct it would obstruct the flow of bile and cause jaundice and inflammation. If it continued long enough it would produce also ulceration which would be followed by perforation. It is hard to tell what might ensue in a case of that kind, because the same thing does not always happen. Such a condition would, in all probability, produce peritonitis. The stones differ in size.

"On recross-examination witness said: There were no symptoms in Dr. Patterson's case to, at first, indicate peritonitis, but just before his death there were indications of it. There was distention of the abdomen and tenderness. That might have arisen from an impaction of gall stones, or it might arise from the discharge of pus and bilious matter into the abdomen. Any of these causes would give rise to peritonitis. This pus would have been discharged from a suppurative process going on probably under the surface of the liver in connection with the gall bladder.

"By Mr. Hoehling: Will you please state whether, on the occasion of your first visit, professionally, to Henry E. Patterson, on the 29th day of March, 1902, he made any statement to you as to the cause of his condition physically, and if so, state what it was.

"Which question was objected to by counsel for the defendant, and the objection sustained. To the ruling of the court in sustaining said objection the plaintiff duly excepted.

The plaintiff, Alice M. Patterson, testified as follows:

"I have known Dr. Patterson since childhood. His physical condition prior to his death was good. He was ill only three times since our marriage that I recall. We were married in 1884. The first time he was ill was in 1893 when he suffered from acute indigestion, and was sick only one day. The next time was in 1897; he was suffering from an intestinal obstruction caused by eating strawberries; he was ill three or four days, and returned to his business in about twelve days. The next illness was facial neuralgia; I think that was before 1893; aside from this he had good health, was a strong man, and attended to his work all the time. He weighed about one hundred and eighty pounds, was six feet tall, and a muscular man. His appetite was normal, and he was not of a nervous disposition. I was at the office on March 28, 1902, en-

Digitized by Google

gaged with him in the practice of osteopathy. He had been treating patients all the morning. He had been treating a patient when he came out in the hall where he met me—I also had been treating a patient in another room. He said, 'I have strained my back, I have given myself a terrible wrench.' He went into one of the treating rooms, and I examined him and gave him a gentle treatment in the region of the strain. It was a strain he had received while working either in lifting or turning a patient over on the table, or something of that sort. I left him lying on the table with a hot water bottle on him while I went on with my work. He said he was suffering acute pain from the twist or lift, that he had overlifted and strained his back. The hot water bottle seemed to give him some relief. He remained on the table for about an hour, then he got up and tried to do some work, but he found the pain too severe and got Dr. Smith to treat his patient, and he remained in the room for a time and then went into another room and laid down, where he stayed for two hours, and then he went home. He said he could not stay any longer because of that severe pain in the back.

"Prior to the 28th of March he had not suffered from any trouble except a slight pain that he had nearly a month, or several weeks before, on the 20th of February, when he had a slight strain, from which he quickly recovered. It did not incapacitate him. I came to the office with him on March 28, and he was then apparently perfectly well. I saw him a very few minutes, not over thirty, or perhaps fifteen, I can not say definitely, before he came into the hall and complained of this strain, and he was then all right, perfectly well. He went home that day by himself, and I followed in a few minutes. I found him still suffering extreme pain. I made him take a hot bath and I rubbed his back with chloroform liniment and put him to bed. The pain was on the right side of the spine between the sixth and seventh vertebræ, and from there down to the ninth or tenth, just over the region of the spine. About 5 o'clock he complained of pain in the abdomen. He said the pain seemed to begin in the back and extend around to the front.

"I sent for Dr. Lee the next morning about 10.30 o'clock. He seemed to grow gradually worse from the time of the injury. Dr. Lee came to the house about 11.30, and came back later in the afternoon, as Dr. Patterson had grown very much worse, and at 6.30 Dr. Lee had to give him a hypodermic injection. The patient said he could not stand the pain. He complained chiefly of the pain in his back, but I don't think he was delirious until towards the last. He died on April 10. An operation was suggested the evening before he died, but I do not remember Dr. Lee's requesting to make an autopsy. I furnished the proofs of death to the defendant company.

"Plaintiff thereupon offered in evidence the letter of the Ocean Accident and Guarantee Corporation, dated May 9, 1902, acknowledging receipt from William M. Springer, of No. 1416 F street, Washington, D. C., of his letter of May 8, with inclosures. The enclosures consisting of affidavits or proof of death.

"The Witness: I have received nothing from the company and am the beneficiary named in the policy of insurance.

"On cross-examination witness stated: Dr. Patterson was also insured in the Mutual Life Insurance Company, of New York. His application was in March, 1902; I furnished proofs of death to that company. I do not remember the statement I made as to the cause of death, but I signed and made oath to the statement, which I recognize as the one now presented me.

"In my affidavit given to the defendant company I stated that about noon on the 28th day of March, my husband, who had been treating a patient in another room, informed me that he had strained himself; that he became sick, and subsequently died. In my statement to the Mutual Life Insurance Company the following questions and answers appear:

"Q. When did the health of deceased first become to be affected? A. March 28, 1902.

"Q. The duration of his illness? A. He died April 10, 1902.

"Q. What was the immediate cause of death? A. Inflammation of the liver.

"Q. Give every particular in relation to the last illness within your knowledge? A. Brought about by strain caused by raising a window in an awkward position.

"The witness: That was the first strain he had, which was on February 20. I don't know why I stated to the Mutual Life Insurance Company that the injury suffered by Dr. Patterson occurred on February 20 from raising a window; it must be a mistake, because he recovered from his first injury. He told me about this injury. I did not see the accident. He did not report this first accident to the Accident Insurance Company, because he did not consider it serious enough. I don't know which patient he was treating when he was hurt, or the name of the patient. He came out in the hall and said, 'I have strained myself in a treatment.' His language was, 'I have just strained myself terribly.' He said he was suffering great pain, and both Dr. Smith and myself examined him. I removed his coat and vest, and raised his shirts and examined his flesh in the back. I observed nothing but a tightening of the ligaments of the muscles, and a sore condition. I know it was sore from what he told me. I am an osteopathist, but am not a physician. The injury appeared on the right side, particularly close under the shoulder blade. I gave notice of Dr. Patterson's injury to the defendant on April 7. The officers of the defendant came to the house about fifteen minutes before the funeral and asked to have an autopsy made. I did not give the company any notice of Dr. Patterson's death, but think it was done by friends. I do not know when this notice was given. I think Mr. Boss, who was the agent of the company, gave the notice. The officers of the company asked permission of some members of the family to examine the body, but it was about fifteen minutes before the funeral. My brother told me that they came to the house, but I did not see them. I did not know, before the funeral, that permission to examine the body had been denied them, but heard it afterwards. I do not think that my brother came upstairs to consult me while Dr. Johnston and Dr. Glazebrook were

Digitized by Google

downstairs waiting for permission to examine the body, but I do not think it is so. When these doctors came, people were already coming to the house for the funeral. I do not know that the defendant company received notice of Dr. Patterson's death only two hours before the funeral.

"I received a letter from the agent of the defendant, dated April 13, 1902, which is as follows:

"'DEAR MADAM: We were notified of Dr. Patterson's death at 9.30 Saturday morning, April 12, 1902. As Mr. Patterson held an accident policy in this company, we, at once, sent Dr. Joseph Taber Johnston and Dr. L. W. Glazebrook to your residence to examine the body of Dr. Patterson in respect to the cause of his death as provided in the policy. This examination was refused. The importance of determining absolutely the cause of his death is so great, both for you as beneficiary under the policy, and for us, that we are willing to again offer to make such examination. If you will consent to it, we will arrange the time to suit the physician who represents you, and he will, of course, be entitled to be present at the examination.

"'Please let us hear from you in regard to this before twelve, noon, Monday, April 14, 1902, so that the examination may be made promptly. The expense of disinterment and examination will be paid by us.

"'If the examination provided by the policy is again refused, we shall disclaim all liability on the policy.

"'We are very sorry to be obliged to disturb you in this matter, under the circumstances, but the importance of the matter for us both does not admit of delay.

"'Very truly yours,

"'OCEAN ACCIDENT AND GUARANTEE CORPORATION, LIMITED,

"'By L. O. DE LASHMUTT,

General Agent for D. C.'

"The witness: I made no reply to this letter personally. I have no personal knowledge of any notice of the death being sent to the company, but Mr. Boss, the agent, said it had, and when the doctors asked for permission to examine the body it was refused because we were just ready for the funeral services to begin. They asked permission afterwards to have the body disinterred, and I did not refuse that outright; of course I objected to it, and when Dr. Nevitt came and asked me about it, I, of course, objected to having it done.

"On redirect examination witness said: I was not seen by any officer of the company personally until after the burial. Dr. Nevitt came to the house on Monday with Mr. De Lashmutt, but the latter did not come in the house. Dr. Nevitt is coroner of the District. I did not see the doctors when they called at the house on the day of the funeral, and did not know of the call until after the funeral.

"The proof of death given the Mutual Life Insurance Company is not in my handwriting, but I signed it. I have no recollection of reading it. I do not know who furnished the information from which the body of the paper is made up. Judge Springer was my attorney at the time, and I left this matter to him and my brother. Dr. Nevitt and Mr. De Lashmutt called on Monday and Dr. Nevitt asked my name and stated that he was the coroner. I told him my husband had been buried on Saturday in Rock Creek Cemetery. I did not give him the number of the lot. He said that he would have to exhume the body for examination, and I said, 'Oh, Dr. Nevitt, that is a terrible thing to have to do.' I appealed to him not to do it, and asked if there was no way that it could be avoided. He said, 'Yes; withdraw your claim for $5,000 against the Ocean Accident Company and it will not be done.' And I said, 'Well, I would rather not have the $5,000 than have that done, but I can not tell you what to do until I can see my attorney and brother, as they have charge of my affairs.' He promised me that nothing would be done until he heard further from me. Then he went away. I did not see him afterwards.

"On recross-examination witness said: I made oath to the proof of death furnished the Mutual Life Insurance Company, before the notary, but did not know him personally. I am not familiar with Dr. Lee's handwriting, and don't know who wrote the body of the paper. Dr. Lee was our physician, and he was told of the accident on February 20, as soon as he arrived at the house. He was also told of the accident on March 28. I did not communicate with Dr. Nevitt after he left my house, but my friends attended to those matters for me. I did not instruct anybody to communicate with him.

"Thereupon, to further maintain the issues on her part joined, plaintiff recalled Dr. Wibur Smith, who testified as follows: I was at the Patterson house when Drs. Johnston and Glazebrook called. As near as I can remember it was about 10.45, and the funeral was to be held at eleven o'clock. There were about twenty people in the house. I had been standing at the door for some time, and the doctors came into the house and said they had been sent there as representatives of the Accident Insurance Company to hold an autopsy. I told them that it was out of the question, as the funeral services would begin in a few minutes, and that it could not be done. I told them they could step in and look at the body, but they said that it was of no use. They then went away. They had been there only a few minutes. This conversation took place in the hall, and the body was in the parlor. They did not attempt to make an examination. I did not, at that time, tell Mrs. Patterson that the doctors were there. I spoke to her of the probability of an autopsy on the day before, but she had expressed a desire against it. Dr. Lee also spoke to me about it, and I mentioned the subject to her, but it did not agree with her wishes, and was not pressed.

"I think Mr. Boss called at the house during Dr. Patterson's illness. I notified him of the injury on April 7. I can not remember that either Dr. Johnston or Dr. Glazebrook said anything about placing the remains in a vault, and make the examination after the funeral. I don't know when Mr. Boss learned of Dr. Patterson's death, but I think he called the night before the funeral. I know that no representative of the company called at the house to my knowledge between the date of the notice, which was given them, up to about fifteen minutes before the funeral services began.

Digitized by Google

"On recross-examination witness said: I understood that Mr. Boss was a special agent of the company; he took my application for a policy. I don't know whether you would call him an insurance broker or not. I know he was a special agent, because he took my application and he took Dr. Patterson's application. His office was with Mr. Wilson, who is the district agent for the New England Mutual Life Insurance Company. The Accident Company's office was at Mr. De Lashmutt's office, which is No. 1421 G street. I knew he was the district agent, but I did not give him any notice. I remember making checks for premiums on my policy in this company to Mr. Boss as special agent.

"When the doctors called at the house on the day of the funeral and asked leave to make an autopsy, I told them that it could not be done. The body was in the coffin, but it was not sealed up. I do not know whether they could have made an examination of the body, but they could view it.

"The only portion of the body that was exposed was the face and hands. I don't remember that after declining to permit an autopsy, the doctors asked that the funeral be permitted to go on, and that the body be placed in the vault temporarily so that they could make an examination. I would not deny that such request was made, and I would not affirm it, because I do not remember.

"Thereupon the plaintiff, to further maintain the issue on her part joined, recalled William A. Boss, who testified as follows: I was present at the Patterson house when Drs. Johnston and Glazebrook called. Dr. Smith met them at the door; they had some conversation, and in a few minutes they asked if they could hold an autopsy, and Dr. Smith said no. Then they asked if they could examine the body. Dr. Smith said they could view the body. That was about 10.45. I did not hear them request that the body be placed in a vault, and I would have heard it if such request had been made.

"I had made arrangements some time before with Mr. Newton, who was the manager of the Accident Insurance Company, to permit me to write accident insurance for him as special agent; it was a verbal agreement.

"The first I heard of Dr. Patterson's injury was about April 7—I received this notice from Dr. Smith. I forwarded Dr. Smith's letter to Mr. De Lashmutt's office, who was at that time manager of the company. I learned of Dr. Patterson's death on Friday night, read it in the newspaper, and I immediately went to the house. The next morning at nine o'clock I went to Mr. De Lashmutt's office, and notified him of the death; that was the day of the funeral. He at once telephoned to New York for instructions, and he asked Drs. Johnston and Glazebrook to go to the house. I should say it was between 9.30 and ten o'clock. I don't think the company had any regular medical examiner at that time.

On cross-examination witness said: "I do not claim that at that time I was an agent of the company authorized to receive death notices. My duties were to submit accident policies, and I had nothing further to do except to renew the policy when it was due. I was also engaged in the life insurance business and a solicitor of insurance of various kinds.

"Dr. Smith's notice was in writing, and I don't recall whether I mailed it to Mr. De Lashmutt or took it to his office. I think I took it there and delivered it to his clerk, but I am not certain about this. I received the notice on April 7, and I think I sent it to Mr. De Lashmutt on the 8th, which was Tuesday. I think Dr. Patterson died Thursday night. I saw it in Friday night's paper, and the next morning notified Mr. De Lashmutt. I could not say that Drs. Johnston and Glazebrook did not request to have the body placed in a vault temporarily, as I do not remember. I was present during the conversation which took place in the hall between the doctors, and I do not remember Dr. Smith's leaving the hall."

Upon the conclusion of plaintiff's evidence the court sustained a motion to direct a verdict for the defendant, and plaintiff has appealed from the judgment rendered thereon.

1. The declarations of the assured, testified to by his wife and brother-in-law, were properly admitted as tending to show not only that he was then suffering severe bodily pain, but also that he had sustained an accidental strain in the treatment of a patient. They come clearly within the rule of competency, as part of the res gestæ, that was enounced by the Supreme Court of the United States in Insurance Co. v. Mosley, 8 Wall. 397, 404, 405. See, also, Insurance Co. v. Hillmon, 145 U. S. 285, 296; R. R. Co. v. McLane, 11 App. D. C., 220, 222: 25 Wash. Law Rep. 485.

The statements made by the assured to his attending physician, on the day after the alleged accident, tending to show his bodily pain, the particular location of the same, and the symptoms of his malady were also properly admitted. N. P. R. R. v. Urlin, 158 U. S. 271, 274.

But it was not error to exclude his statements then made to the physician tending to show that he had received a strain on the day before to which he attributed his condition. This was too long after the occurrence to be admissible as part of the res gestæ under the rule of the cases before cited.

2. The case was withdrawn from the jury on the ground that the evidence offered by the plaintiff was not sufficient, as matter of law, to establish liability on the part of the defendant.

(1) The first question is, was the evidence sufficient to require submission to the jury to determine whether the assured sustained an accident on March 28, and, if so, whether the same was the actual and direct cause of his death within the meaning of the policy?

The evidence plainly tended to show that prior to March 28 the assured had been a strong, vigorous, and apparently healthy man; and that on that day he sustained an accidental strain which gave him severe bodily pain and caused the cessation of his labors. The existence of these facts depended upon the credibility of the witnesses testifying thereto and the weight of their evidence, both of which were within the exclusive province of the jury.

(2) The evidence tending to show that the assured continued to suffer great pain in the same parts of the body until his death about ten days thereafter was strong and undisputed.

Digitized by Google

The evidence tending to show that the accidental strain caused the rupture of some ligaments or tissue connected with the liver, or the rupture of the gall bladder or bile duct, thereby becoming the actual, efficient cause of death, is undoubtedly weak, but we are not prepared to say that it was so plainly insufficient as to warrant its withdrawal from the consideration of the jury. Doubting whether all reasonable men must necessarily come to the one conclusion therefrom, that plaintiff had failed to make out a case of death resulting from accident, we are constrained to resolve that doubt in favor of trial by jury. The rule in ordinary cases is, that what is the proximate cause of an injury is generally a question for the jury, to be determined as a fact in view of all the circumstances of fact attending it. Milwaukee & St. P. R. Co. v. Kellogg, 94 U. S. 469, 474, 476; Guenther v. Met. R. R. Co., 23 App. D. C. 493, 510: 32 Wash. Law Rep. 422.

Were this an action of damages against a wrongdoer for death, resulting from an injury caused by wilful or negligent act, the defendant could not escape liability on the mere ground that before the accident there was an existing malady or diseased condition of the liver, gall bladder, or bile duct of the deceased, and that death resulted or was hastened because the injury aggravated the effects of that disease, or the disease aggravated the effects of the injury. The liability exists in such cases if the injury is the predominant, efficient cause of the death, notwithstanding it would not have naturally produced death if there had been no such preexisting disease. Guenther v. Met. R. R., 23 App. D. C. 493, 515, 516: 32 Wash Law Rep. 422. That the rule in that case might not be regarded as intended to extend to a case of contract, which was not there involved, it was said: "Whatever the rule may be in an action depending upon the construction of a contract of insurance against accident, under certain limitations and exceptions, as to liability where the death was from disease, 'aggravated and made fatal,' by accident, we do not think it can apply in an action of tort for the benefit of a wrongdoer."

(3) It remains, now, to consider the question in the light of the stipulations of the contract upon which the action is maintained.

By the first of these the insurance is expressly stated to be, "against accidental bodily injuries caused, solely, . . . by external, violent, and visible means, which shall independently of all other causes disable the assured."

That a strain received in the ordinary course of the assured's business, if received at all, is an accident within the contemplation of the policy we can have no doubt. Mut. Acc. Assn. v. Barry, 131 U. S. 100, 121.

The universal rule of interpretation of contracts of insurance of all kinds, is that in cases of doubt that interpretation shall be given which favors the insured rather than the insurer. The particular words quoted would seem to have been intended particularly to apply to a case of disability for which the assured might claim the indemnity stipulated in the policy. But assuming that they were expressly intended to apply to the death indemnity clause, and be read in connection with the words therein providing that death shall result from accidental bodily injuries as the "actual and direct cause thereof," we think they can not be regarded as clearly meaning that there shall be no recovery in a case where there was a preexisting diseased condition of the body—a predisposing cause of death as it has been called—notwithstanding the accidental injury may have been the exciting, efficient, predominant cause.

Their meaning, considering them together or separately, is, in our opinion, that the intervening accident must be the proximate, direct cause of death, and nothing more. This conclusion is supported by the following authorities: Fetter v. Fidelity & Casualty Co., 174 Mo. 276; Horsfall v. Pac. Mut. Life Ins. Co., 32 Wash. 132; Modern Woodmen Acc. Assn. v. Shryock, 54 Neb. 250; Freeman v. Mercantile Mutu. Acc. Assn., 156 Mass. 351, 353; see, also, Winspear v. Acc. Ins. Co., L. R. 6 Q. B. Div. 42, 45; Travelers Ins. Co. v. Murray, 16 Colo. 296; Atlanta Acc. Assn. v. Alexander, 104 Ga. 709; Omberg v. U. S. Mut. Acc. Assn., 101 Ky. 303.

The doctrine is well expressed by the Supreme Judicial Court of Massachusetts, in Freeman v. Ins. Co., supra, in the following words: "The law will not go further back in the line of causation than to find the active, efficient, procuring cause, of which the event under consideration is the natural and probable consequence, in view of the existing circumstances and conditions. . . . An injury which might naturally produce death in a person of a certain temperament or state of health is the cause of his death, if he dies by reason of it, even if he would not have died if his temperament or previous health had been different; and this is so, as well when death comes through the medium of a disease directly induced by the injury, as when the injury immediately interrupts the vital processes."

It is true that there are cases of highly respectable authority, some of which directly and others indirectly support the contention of the appellee. These have been carefully examined, but we shall not review them, as that has been done in a satisfactory manner by the Supreme Court of Nebraska, in Modern Woodmen, etc., v. Shryock, supra. It may be remarked, however, that the able opinion in the case of National Masonic Acc. Assn. v. Shryock, 73 Fed. Rep. 774, upon which the appellee strongly relies, is founded upon the terms of a policy quite different from that involved in this case. Therein it was expressly stipulated that the insurance does not cover "death or disability resulting wholly or in part, directly or indirectly, from any of the following causes: . . . disease or bodily infirmity." . . .

Other provisions of this policy tend to confirm our view of the interpretation of the words before quoted. The assured was required to answer whether his hearing or vision was impaired, and whether he had ever had or been subject to fits or diseases of the brain. His negative answers thereto were declared to be special warranties, the untruth of which, in any respect, would render the policy null and void. It is reasonable to presume, therefore, that an affirmative answer to any one of these questions would have resulted in the denial of the policy. If, then, it was the intention of the in-

Digitized by Google

surer not to become liable in the event that an accident should result from any other malady or unknown infirmity, or in the event that a pre-existing malady, uninquired of, and probably unknown to the assured, should be developed and brought into sudden operation by an accidental injury, and produce death, why was it not expressly provided for, also, in the policy and brought to the actual knowledge of the assured? Again, this form of policy was intended for the insurance of women as well as men, and, as we have seen, expressly stipulates that it shall not cover "death or injury to a woman wholly or in part attributable to childbirth or pregnancy, although such death or injury may have been accelerated by accident." If the construction of the previous provision contended for by appellee is the correct one, this stipulation is unnecessary and unimportant. If not, its materiality and importance are obvious.

The insurer writes its contracts and its agents are expressly forbidden the power to alter any of their terms or waive any of their conditions without the consent in writing of its general manager. It is eminently just, therefore, that it should not be permitted to escape liability through any limitation thereof not fairly and reasonably disclosed by the terms and conditions of the contract to those soliciting insurance or accepting it at the solicitation of the insurer's agents.

3. The last question for consideration arises under the clause of the policy which provides that "any medical adviser of the corporation shall have the right and opportunity, as often as he may require, to examine the person or body of the assured in respect to alleged injury or cause of death, and any refusal on the part of the assured, or of the beneficiary, or of the legal representatives of the assured, to comply with this provision shall operate to defeat the policy."

We are not advised that the withdrawal of the case from the jury was founded on the evidence relating to the defense under this clause, but it presents a question that must necessarily be determined in view of the new trial that will be awarded.

We can not agree with the general contention of the appellee that this right to examine the body includes also the right of autopsy or dissection, much less exhumation, for that purpose.

As heretofore remarked, where there is any doubt as to the meaning of the terms and conditions of a contract of insurance, it is to be resolved in favor of the assured, and this rule of construction has its strongest application in relation to those that would work the forfeiture of a right otherwise maintainable. It is also a reasonable and well-established rule of interpretation that the terms used are to be understood in their ordinary and popular sense. Whatever meaning the word examine, in relation to the body of a deceased person, might convey to medical experts, we think it clear that, in popular understanding, it does not include the right of dissection.

The prejudice, if it may be so called, which so generally prevails, and especially among the relations and friends of a deceased person, against the submission of the body to dissection, would doubtless prevent many persons from accepting insurance containing an express condition extending that right to the insurer if considered material for his protection. Sudduth v. Travelers Ins. Co., 106 Fed. Rep. 822; Ewing v. Com. Trav. Mut. Acc. Assn., 55 N. Y. App. Div. 241; S. C. 170, N. Y. 590.

It would seem from the evidence before recited, that the purpose of the insurer was not to view or examine the appearance of the body merely, but to dissect the same. If the question be raised upon another trial it will be the duty of the court to instruct the jury in accordance with this view of the effect of the clause under consideration; and to submit to them the single question whether, upon demand reasonably made therefor, the plaintiff, or those acting for her, refused to permit the medical advisers of the insurer to examine the body in the sense of that word as here given. A failure to extend that permission, upon demand made at a reasonable time and place before burial, would bar recovery upon the policy.

For the reasons given, the judgment will be reversed with costs, and the cause remanded with direction to award a new trial. It is so ordered.

Reversed.

A carrier must carry persons seemingly disabled, who in fact are, to the carrier's knowledge, able to care for themselves. Illinois Cent. Ry. Co. v. Smith (Miss.), 37 So. Rep. 643.

In an action for injuries by being ejected from a freight train, testimony of plaintiff held admissible to show that he was injured by fall through cattle guard after he was ejected. Houston & T. C. R. Co. v. Berry (Tex.), 84 S. W. Rep. 258.

A passenger injured while walking to a station after having alighted from the rear car of an excursion train, held not guilty of contributory negligence. Chesapeake & O. Ry. Co. v. Smith, Va., 49 S. E. Rep. 487.

In an action for injuries to a passenger, the burden is upon him to prove the negligence alleged. Young v. Missouri Pac. Ry. Co., Mo., 84 S. W. Rep. 175.

In an action for services rendered, a finding that the services were not rendered at the request of defendants negatives the fact of an implied, as well as an express, request. Merrill v. Gunnison, Cal., 79 Pac. Rep. 67.

Where the holder of a note properly indorsed sues thereon, and the maker claims that he is not a holder for value, the burden is on him to prove the same. Price v. Winnebago Nat. Bank, Okla., 79 Pac. Rep. 105.

Digitized by Google

Humor of the Law.

Samuel Davis, court stenographer of the second circuit, said that an Irishman who several years ago tried to engage the legal services of his father had the oddest ground for a lawsuit he had ever heard of. The Irishman wanted to sue his landlady for $15. He explained that he made a contract to pay her $3 a week for board, but she was to deduct 25 cents for every meal he missed. Having got the contract duly signed, Pat began to board elsewhere and charged the lady with whom he had contracted 25 cents for every meal he missed, $5.25 worth of meals each week, for which his contract required him to pay only $3, so that by staying away he made $2.25 clear. The landlady refused to pay him his profits, and he wanted Mr. Davis to bring suit against her for him. "Father laughed at him a bit," Mr. Davis says, "and he got indignant." "A contract is a contract," said Pat, "and she ought to be made live up to her'n just as well as me mine." There were several other lawyers in town, and some of them were pretty hard up for cases, but I don't know of anybody that took that one after father turned it down."

A letter, signed by the lessor, inclosed with a lease to the lessee for execution, held not a signing of the lease by the lessor, within the statute of frauds.—Jewett v. Griesheimer, 91 N. Y. Supp. 654.

An agent of a mutual insurance company authorized to issue policies has no authority to waive a payment of part of the premium.—Graham v. Mercantile Town Mut. Ins. Co., Mo., 84 S. W. Rep. 93.

A non-expert witness, when he states facts showing his competency, may give his opinion on the amount of injury or damage done to land by the polution of a stream.—Watson v. Colusa-Parrot Mining & Smelting Co., Mont., 79 Pac. Rep. 14.

Alteration of a note, by the addition of a specified place for payment, by one not a stranger to the paper, held to avoid the contract as to all non-consenting parties.—Carroll v. Warren, Ala., 37 So. Rep. 687.

In an action for injuries to a passenger by being struck by a car running in the opposite direction from that from which she alighted, held, that the questions of negligence and contributory negligence were for the jury. Craven v. International Ry. Co., 91 N. Y. Supp. 625.

One who purchases a check is bound to know that the signature of the payee is genuine. Merchants' Bank v. Prudential Ins. Co. (Mo.), 84 S. W. Rep. 101.

In an action against a carrier by a female passenger, held proper, under the petition, to permit a witness to testify that some of the passengers were drunk and were rude and boisterous. St. Louis South Western Ry. Co. of Texas v. Wright, Tex., 84 S. W. Rep. 270.

A finding in bankruptcy held to authorize one in action to quiet title that the property was found exempt. McKinley v. Morgan, Wash., 79 Pac. Rep. 45.

Where in involuntary proceedings, after the filing of answers, petitioners move for an adjudication on the pleadings, an overruling of the motion entitles defendants to a final decree dismissing the petition. In re Waugh, U. S. C. C. of App., Ninth Circuit, 133 Fed. Rep. 281.

Under Rev. Code 1892, section 1797, affidavit verifying a plea held insufficient to require proof of plaintiff's right to sue in representative capacity. Thompson v. First Nat. Bank (Miss.), 37 So. Rep. 645.

NEW EDITION NOW READY

Collier on Bankruptcy

FIFTH EDITION, 1905

Sheep, 1034 Pages, $6.30.

MATTHEW BENDER & CO.

Law Publishers Albany, N. Y.

1657

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Digitized by Google

Legal Notices.

FIRST INSERTION.

E. L. Schmidt, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Johanna Kern**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. ALBERT C. SCHIFF, 826 9th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,891. Administration. 18-3t

T. L. Jeffords and Milton Strasburger, Solicitors

In the Supreme Court of the District of Columbia.
Alexander E. B. Alford v. Thomas Orme et al.
In Equity. No. 25,332.

The object of this suit is to have partition, by sale, of original lot numbered nine (9) in square thirty-one (31), in the city of Washington, District of Columbia. On motion of the complainant, it is this 4th day of May, 1905, ordered that the defendant, **William Sullivan**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

Mackall & Maedel, Attorneys

In the Supreme Court of the District of Columbia.
Theodore J. Mayer et al., Plaintiffs, v. The Security Milling Co., a Corporation, Defendant.
At Law, No. 47,612.

The object of this suit is to recover of the defendant the sum of six hundred and thirty-two dollars and seventeen cents ($632.17) as damages for the breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 3d day of May, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Buhrman, Asst. Clerk. 18-3t

B. P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward C. Halliday, Deceased.
No. 12,877. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Henrietta M. Halliday, it is ordered this 4th day of May, A. D. 1905, that notice be and hereby is given to **the unknown heirs at law of said Edward C. Halliday**, descendant of Edward Cairns, who died in Scotland, in the Kingdom of Great Britain, in 1819, and to all others concerned, to appear in said court on **Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices

Edwin C. Dutton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Emma Sedgwick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of April, 1905. EDWIN C. DUTTON, 416 5th st. N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,881. Administration. 18-3t

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of James Donohoe, Deceased.
No. 12,834. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Margaret** Donohoe, the executrix named in said will and testament, it is ordered this 28th day of April, A. D. 1905, that notice be and hereby is given to **Mrs. Kehoe**, a sister, residing in the city of Syracuse, State of New York; **Margaret Donohoe**, a sister, residing in Rathangan, County Wexford, Ireland; **the children of Mary Kelly**, a deceased sister, and **the unknown heirs at law and next of kin of said deceased**, and to all others concerned, to appear in said court on **Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **William H. Payne**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 22d day of May, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 2d day of May, 1905. LEIGH ROBINSON, 1333 F. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,117. Administration. 18-3t

Lambert & Baker, Solicitors

In the Supreme Court of the District of Columbia.
Nannie Nora Hyman vs. John B. Hyman et al.
Equity, No. 25,297.

The object of this suit is to obtain a decree for sale of lot numbered fifty-five (55), in square numbered two hundred nine (209), in the city of Washington, District of Columbia. It appearing to the satisfaction of the court that Charles M. Hyman is a non-resident, and the subpœna issued has been returned by the marshal not to be found, it is this 2d day of May, 1905, ordered that defendant, **Charles M. Hyman**, cause his appearance to be entered herein on or before the first rule day occurring on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of first publication of this order, otherwise this cause be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and Washington Times once a week for three successive weeks prior to said date. THOS. H. ANDERSON, Justice. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 18-3t

Digitized by Google

Legal Notices.

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary L. Reddick, Deceased.
No. 12,855. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Philip Stewart, it is ordered this 1st day of May, A. D. 1905, that notice be and hereby is given to **Leroy Faulk, Rufus Faulk, Maria Faulk Pitz, and Joshua Faulk,** and to all others concerned, to appear in said court on **Monday, the 5th day of June, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia. Clerk of the Probate Court. 18-3t

---

C. Albert White and W. Mosby Williams, Solicitors

In the Supreme Court of the District of Columbia.
Charles W. Fairfax v. Unknown Heirs, etc., of James Small, Deceased, et al.
Equity No. 23,999.

C. Albert White and W. Mosby Williams having reported an offer from William J. Holtman of $800.00, all cash, for lots 17 and 18 in Small's subdivision in square 828 in the city of Washington, District of Columbia, on the conditions and said offer, subject to the payment to Moore & Hill, Inc., of 3% commission, as set forth in said report, it is, therefore, this 1st day of May, 1905, ordered that said offer be accepted and the sale of said lots ratified and confirmed on the **31st day of May, 1905,** unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

---

E. L. White, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court for the said District.
In re Estate of Margaret Edes, Deceased.
No. 12,883.

Upon consideration of the petition heretofore herein filed by Thomas Hyde, J. Hubley Ashton, and Henry H. Flather, praying that a certain paper writing, bearing date the 15th day of March, 1905, and purporting to be the last will and testament of Margaret Edes, late of the city of Washington, in the District of Columbia, spinster, deceased, and which is now on file in the office of the register of wills of the said District, may be admitted to probate and record, both as to realty and as to personalty, as and for the last will and testament of the said Margaret Edes, deceased, and that letters testamentary thereunder may be granted unto the said petitioners, and it appearing to the court that, of the persons who, but for the execution of the said paper writing, would, or might, be entitled to, or interested in, the estate, or in some part of the estate, of the said decedent, as her heirs at law, or next of kin, the following, to wit, Sarah Smull, Ellen Smull, Elizabeth F. Focke, Margaret Ellen Meredith, Alice Jane Justins, Zaidee Harriman, Ethel Smull, Barston Smull, George W. Smull, Herbert Smull, and Dorothy Smull, are non-residents of the District of Columbia, and have been returned not to be found by the marshal thereof, it is now, this 1st day of May, 1905, on motion of Mr. Selden, solicitor for the petitioners, by the court, ordered that **Friday, the 30th day of June, 1905,** be, and the same is hereby, appointed for the appearance before the court, holding a Probate Court, of each of the above-named non-residents, to show cause why the said prayers of the said petition should not be granted. Provided a copy of this order be published once in each of three successive weeks in The Washington Post, a newspaper of general circulation in the said District, and also in The Washington Law Reporter, the last in time of such publications to be made not less than thirty days in advance of June 30, 1905; and provided, also, that a copy of this order, as published, be mailed to each of the said non-residents at his or her last known postoffice address. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 18-4t

Legal Notices.

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William E. Tinney,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of April, 1905. CHARLES W. BOYLE, 416 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,875. Administration. 18-3t

---

SECOND INSERTION.

H. D. Gordon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel M. Whitside,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. CARRIE M. WHITSIDE, Bethesda, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,633. Administration. 17-3t

---

J. Harry Smith, Atttorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Silas J. Beckley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. HOWARD BECKLEY, 2519 M st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,878. Administration. 17-3t

---

L. H. Pool, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles G. Thorn,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. AMANDA J. THORN, 1821 Baltimore street. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,845. Administration. 17-3t

---

Stuart McNamara, Solicitor

In the Supreme Court of the District of Columbia.
Irene Jones, Petitioner, v. Don Jones and Gertrude Thompson, alias Gertrude Prall, Defendants.
No. 24,496. Equity Docket No. 54.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, Don Jones, on the ground of adultery. On motion of the complainant, it is, this 14th day of April, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

Digitized by Google

Legal Notices.

Millan & Smith, Solicitors

In the Supreme Court of the District of Columbia.
Mary C. Avery et al. v. James M. Bennett et al.
Equity No. 24,183.

Upon consideration of the report of William W. Millan and W. Mosby Williams, trustees, herein filed, showing that they have sold lot eight (8) in square thirty-five (35) in the city of Washington, District of Columbia, to Mary C. Avery and Rebecca J. Bennett, for twenty-four (24) cents a square foot, it is this 24th day of April, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of May, A. D. 1905.** Provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

John M. George, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Charles B. Hinton, Deceased.
Administration No. 12,840.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by Elizabeth Hoeke, it is ordered this 24th day of April, A. D. 1905, that notice be and is hereby given to **Charles P. Hinton,** and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles C. Cole,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. R. GOLDEN DONALDSON, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,849. Administration. 17-3t

Wm. L. Browning, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John Stewart,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. WILLIAM L. BROWNING Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,843. Administration. 17-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Winnie S. Simpson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. MAUD E. CHAPMAN, 10 Summer ave., Anacostia, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. **No. 12,805. Administration.** 17-3t

Legal Notices.

Marion T. Clinkscales, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Ada Comfort et al., Complainants, vs. Henry Willis, Defendant. Equity No. 24,942. Docket No. 55.

ORDER CONFIRMING TRUSTEE'S SALE NISI.

Marion T. Clinkscales, trustee in the above-entitled cause, having reported the sale of the south one-half of lot numbered nine (9), in square numbered ten hundred and sixty-nine (1069), together with the improvements thereon, to Charles E. Harris, at and for the sum of seven hundred and seventy-five ($775), it is this 24th day of April, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the **24th day of May, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Theodore M. Rudd,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 15th day of May, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,007. Administration. 17-3t

Erskine Gordon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Eli E. Kirby, Deceased.
No. 12,835. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Evander French, it is ordered, this 26th day of April, A. D. 1905, that notice be and hereby is given to **George H. Kirby, Charles B. Kirby, and the unknown next of kin of Eli E. Kirby, deceased,** and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day and at least three times in some daily newspaper in Burlington, Vermont. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

Charles S. Muir, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ellen Flynn, Deceased.
No. 12,841. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Isaac H. Saunders, it is ordered this 27th day of April, A. D. 1905, that notice be and hereby is given to the unknown next of kin and heirs at law of said Ellen Flynn, and to all others concerned, to appear in said court on **Monday, the 29th day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest. Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

Digitized by Google

Legal Notices.

William L. Eiterich, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna Maria Fleischhauer, Deceased.
No. 12,815. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julius Th. Fleischhauer and Edith M. Phoelus, it is ordered this 20th day of April, A. D. 1905, that notice be and hereby is given to **Rosa Schultz, nee Fleischhauer, in Kimberly G. W., South Africa,** and to all others concerned, to appear in said court on **Tuesday, the 23d day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

Stuart McNamara, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Patrick Danaher,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, **appointed Thursday, the 11th day of May, 1905, at 11 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of April, 1905. DANIEL E. DANAHER, Executor, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,981. Administration. 17-3t

Wm. G. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bernard H. Johnston, Deceased.
No. 12,786. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James M. Johnston and William G. Johnson, it is ordered, this 20th day of April, A. D. 1905, that notice be and hereby is given to **Violet Johnston,** a minor, and to all others concerned, to appear in said court on **Wednesday, the 24th day of May, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

E. M. Parker, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Nancy D. Bishop, Deceased.
No. 10,732.

Samuel S. Yoder, executor herein, having reported to the court that he has received an offer to purchase sublot seventeen (17) in square No. sixty (60), in the city of Washington, District of Columbia, for the sum of $800.00 cash, of which the sum of $50.00 has been paid and the balance to be paid on final ratification of sale, and also an offer to purchase lot eighteen (18) in square No. seven hundred and fifty-eight (758), of the said city and District, as described in the proceedings herein for the sum of $5,150.00 cash, of which the sum of $200.00 has been paid, the balance to be paid on final ratification of sale. It is, this 25th day of April, 1905, ordered that said offers be accepted and said sales be ratified and confirmed, unless cause to the contrary be shown on or before the **19th day of May, 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

Legal Notices.

D. W. Baker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clara P. Bateman,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. FRANCIS E. BROCKWAY, 202 A st. S. E.; CHARLES A. KRAM, Wash. Loan & Trust Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,865. Administration. 17-3t

Edward S. Bailey, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Urban Gebhart,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of October, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ELIZABETH GEBHART, by Edward S. Bailey, her Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,864. Administration. 17-3t

James Hamilton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **LaRhett L. Livingston,** late of the United States Army, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. MARY EATON LIVINGSTON, Room 806, Wash. Loan & Trust Bldg., care of James Hamilton. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,423. Administration. 17-3t

Robert H. Martin, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles E. Persons,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. AGNES ELIZABETH PERSONS, 641 F st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,831. Administration. 17-3t

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Susan E. Detrick,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1905. EDWARD H. THOMAS, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 17-3t

Digitized by Google

Legal Notices.

Geo. Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward R. Morcoe,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ROBERT M. MORRISON, 617 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,862. Administration. 17-3t

Enoch L. White, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Jane Thumlert,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. E. L. WHITE, Pacific Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,833. Administration. 17-3t

THIRD INSERTION.

In the Supreme Court of the District of Columbia
Holding an Equity Court.
William H. McCaffrey et al. v. Lizzie C. Manogue.
In Equity, No. 22,346.

Upon consideration of the report of Henry F. Woodard, Orrin B. Hallam, and Edwin Forrest, trustees, filed herein on the 20th day of April, 1905, stating that they have sold the property described in said report and in these proceedings, to wit, the north 87½ feet, more or less, of lot 20, in square 841, to Richard M. Little for the sum of $9,350.00, it is, by the court, this 20th day of April, A. D. 1905, ordered, adjudged, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **8th day of May, A. D. 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. By the Court: THOS. H. ANDERSON, Justice. A True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

Wilson & Barksdale, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Walter F. Rodrick,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. A. CARTY RODRICK, C. BURTON RODRICK, 101 Fifth st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,858. Administration. 16-3t

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Reinhardt,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. HENRY K. SIMPSON, 826 Pa. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,838. Administration. 16-3t

Legal Notices.

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Pius Stang,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of April, 1905. CARL HAMMEL, 459 D st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,722. Administration. 16-3t

Birney & Woodard, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Green,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of April, 1905. JOHN A. GARVER, 44 Wall st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,636. Administration. 16-3t

Anson S. Taylor, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry L. Biscoe,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. GEORGE W. WHITE, 1401 G st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,863. Administration. 16-3t

FOURTH INSERTION.

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer,** deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 19

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MAY 12, 1905

CONTENTS.

Editorial 289
SUPREME COURT OF THE DISTRICT OF COLUMBIA:
In re estate of Caroline Jenkins Harris, deceased. 290
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Hatty Myers, appellant, v. the District of Columbia 291
Ida Doty, appellant, v. the District of Columbia. 293
Charles White, appellant, v. Postal Telegraph and Cable Company 295
Legal Notices 297

Forfeiture of Charter of Company Incorporated Under District Code.

The case of United States against Manhattan Real Estate Securities Company, No. 47,656, at Law, in the Supreme Court of the District of Columbia, was a proceeding under sections 786 to 791 of the Code for a forfeiture of the charter of the corporation. The petition charged that the Manhattan Real Estate Securities Company was organized under the Code; that two of the three incorporators and trustees were never stockholders of the company; that the company had begun business before making any by-laws and before 10 per cent of its capital stock had been paid in; that it had failed to make an annual report or to keep a stock book, as required by the Code, and that the company had practically ceased to do business.

Upon the filing of the petition a rule was issued by Mr. Justice Barnard requiring the corporation to show cause why the prayers of the petition should not be granted, and the rule was served upon the company and the trustees. No answer was filed, and the cause was heard ex parte, as provided by section 790, upon the petition and affidavits. No opinion was filed by Judge Barnard, but he was of opinion that legal cause of forfeiture existed, and accordingly signed a decree annulling the charter of the company and appointing a receiver to wind up its affairs.

United States Attorney Morgan H. Beach and Assistant United States Attorney Jesse C. Adkins appeared for the United States in the proceeding.

Fraternal Benefit Association—By-Laws Adopted After Issue of Certificate.

A by-law adopted by a fraternal benefit association providing that a benefit certificate issued to a member shall be void and all benefits thereunder forfeited in case the insured shall die by suicide, felonious or otherwise, sane or insane, is consistent with the purposes of the association and with its corporate charter, and imposes a reasonable condition upon which the parties to the contract may agree. Such a by-law, although adopted after the benefit certificate was issued to the insured and before the death of the insured by suicide, violates no vested right of the beneficiary. In the case of Tisch v. The Protected Home Circle, decided March 21, 1905, by the Supreme Court of Ohio, and reported in the Ohio Law Bulletin, a benefit certificate issued by a fraternal benefit association was silent in regard to the suicide of the insured, but the application therefor contained an agreement, signed by the insured, to conform to all the laws, rules, and usages of the order then in force or that might thereafter be adopted, such compliance being made the express condition upon which the insured should be entitled to participate in the beneficiary fund. The application was in express terms made part of the contract. Thereafter the association adopted a by-law providing that benefit certificates should be void and all benefits thereunder forfeited in case the insured died by suicide, sane or insane. It was held that such by-law became a condition in the contract, which, if broken by the insured, defeated a recovery on the certificate.

Equitable Estoppel.

In Standard Sanitary Mfg. Co. v. Abbott, decided February, 1905, by the United States Circuit Court of Appeals for the Third Circuit (135 Fed. 750), it is held that where an equitable estoppel is relied upon the facts upon which it is based must be proved with particularity and precision; and nothing can be supplied by inference or intendment. It was further held that in the absence of expressly proved fraud, there can be no estoppel based upon the acts or conduct of the party sought to be estopped, where such acts or conduct are as consistent with honest purpose and with absence of negligence as with their opposites.

Workman—I've been and got married, sir, and I'd like you to raise my wages. Employer—Very sorry for you, but I'm only responsible for accidents that occur in the works.

Digitized by Google

Supreme Court of the District of Columbia,
HOLDING A PROBATE COURT.

IN RE ESTATE OF CAROLINE JENKINS HARRIS, DECEASED.

DECEDENTS' ESTATES; PRIMARY FUND FOR PAYMENT OF DEBTS; DEBT SECURED BY MORTGAGE.

1. The personal estate of a decedant is the primary fund for the payment of the debts, and the debts must be paid therefrom even though secured by mortgage upon the real estate.
2. Where, however, the debt secured by the mortgage is not the personal debt of the decedent, the rule does not apply; and the debt so secured is a charge upon the real estate, which becomes the primary fund for its payment.
3. Where the decedent purchased real estate subject to a mortgage, and nothing more appears, the personal estate is exonerated from the payment of the mortgage debt to the extent of the real estate security; but if the decedent made the debt his own the personal estate becomes primarily liable for its payment.
4. A purchased real estate, giving notes secured by mortgage of the property for part of the purchase money, which notes were indorsed by B. Subsequently A conveyed the property to B subject to the mortgage, and B died without the mortgage having been discharged. In the settlement of her estate, *held* that B did not make the debt her own so as to make the personal estate the primary fund for its payment, but that the mortgage debt was payable out of the proceeds of the mortgage property.

Admn. No. 11,932. Decided March, 1905.

HEARING on demurrer to a petition by the husband of a decedent to have the personal estate exonerated from payment of a mortgage indebtedness. Demurrer overruled.

Mr. E. Hilton Jackson for the petitioner.
Mr. R. H. McNeill for the respondents.

Mr. Justice STAFFORD delivered the opinion of the court:

This is a petition by the husband of the decedent asking to have the personal estate declared free from the payment of a debt secured upon a parcel of real estate by deed of trust. The petitioner is entitled to so much of the personal estate as shall remain after the payment of the decedent's debts. Dist. Code, sec. 1160.

It appears from the petition, which is demurred to, that the administrator was authorized by this Court to sell this piece of real estate for the payment of debts, the personal estate proving insufficient therefor, and that he has sold the same, and paid the trust debt out of the proceeds. It is alleged that the administrator in his account is about to reimburse himself for the payment of the trust debt out of the personal estate, thereby depriving the petitioner thereof, as the trust debt is greater in amount than the whole of the personal estate after the payment of the personal debts, and the prayer is that the administrator be instructed to the contrary. The history of the trust debt is not stated with as much fullness and particularity as might be desired, and embraces only the following facts, viz., that the trust deed was placed on the property on the 22d day of January, 1901, by Exum P. Lewis; that the notes secured by the trust deed were endorsed by the decedent before delivery; that on the same 22d day of January, Lewis sold the property, subject to the trust, to the decedent; that the deed was recorded on the 4th day of February, 1901; that the notes were payable in three years from date, and were protested at maturity for non-payment. It appears from other files in the estate that the decedent died in December, 1903, before the maturity of the notes. It does not appear how said notes read upon their face other than as above stated, nor for what reason or upon what consideration the decedent endorsed them, nor how it happened that Lewis conveyed the property to the decedent upon the same day that he executed the deed of trust. It is said in oral argument by the demurrant that Lewis was a relative of the decedent, and really purchased the property for her, but there is nothing of this kind upon the record. So far as the court is informed by the files, it is merely a case where the decedent has purchased real estate subject to a mortgage, being originally bound as the endorser before delivery upon the trust notes. We must assume that her obligation upon the notes was secondary to that of Lewis, who was primarily bound to pay them.

There is no doubt that the personal estate is in general the primary fund out of which debts of the decedent are to be paid, nor that the personal estate must pay the debts, even though they be secured by mortgage upon the real estate. But it seems to be equally well settled that when the debt secured by the mortgage is not the personal debt of the decedent, the rule does not apply, but, on the contrary, the debt so secured is a charge upon the real estate, which becomes the primary fund for its payment. So where the decedent has purchased real estate subject to a mortgage, and nothing more appears, the personal estate is exonerated from the payment of the mortgage debt to the extent of the real estate security. If, however, the decedent made the debt his own, as it is said, the personal estate becomes liable primarily for its payment. See the authorities cited below.

So that the real question here is, whether Mrs. Harris, the decedent, did make this obligation her own? It does not appear that she assumed the mortgage in the conveyance which she received from Lewis, nor in any other way, except by endorsing the notes. It is alleged in the petition that the property was conveyed to her "subject to the mortgage," but not that she assumed it. The question is then narrowed down to this: Did the decedent by endorsing the notes make the debt her own so as to charge her personal estate with its payment? The cases do not furnish a harmonious answer to the question, What treatment of the debt by the purchaser will make it her own? Some hold that even the assumption of the mortgage debt by the purchaser of the premises will not have this effect. Creisey v. Willis, 159 Mass. 249. Others hold to the contrary. Thompson v. Thompson, 4 Ohio St. 333.

One case goes so far as to decide that even the guaranteeing of the mortgage notes by the purchaser will not make the debt the debt of the purchaser within the meaning of the rule.

In the case last referred to the purchaser had assumed the payment of the mortgage by a clause in the deed to him, and upon the transfer of the mortgage to a new holder had guaranteed the payment of the mortgage notes in writing upon the back thereof as a consideration for the transfer, and yet it was held that

Digitized by Google

he had not made the debt his own so as to charge his personalty with its payment, his guaranty being merely a collateral undertaking not affecting the original agreement between the mortgagor and the holder of the mortgage. This case, if followed, would determine the one before us in favor of the husband, the petitioner. Greesy v. Willis, 159 Mass., p. 249, decides that merely assuming the mortgage debt is not enough to transfer the charge from the real to the personal estate, and that such a result is not accomplished even by the purchaser waiting upon the mortgagee, and inducing him to delay foreclosure, nor by his paying the interest.

In Lenning's Estate, 52 Pa. St. 135, 138, it is said that the purchaser taking land already charged with a mortgage does not ipso facto make the debt his own or subject his personalty to its payment, and that the same rule prevails even where the party so taking the land gives his own bond or covenant for the payment of the encumbrance if it be done only as a new security or as auxiliary or merely to relieve the land from the pressure of the encumbrance. In such cases, it is said, equity looks upon the land as still the principal security and the undertaking of the purchaser as merely collateral, and it will compel payment out of the land in relief of the personalty; but that when the heir or devisee makes the mortgage debt his own, as by a new mortgage to the mortgagee, or when a purchaser assumes the debt as a part of the price of his purchase, and thus makes it his own, the rule is different.

The reasoning of the cases which hold that assuming the mortgage as a part of the price makes the debt chargeable upon the personalty is that the personalty has been increased to this extent by withholding so much of the price. If one purchasing real estate borrows of a third person and mortgages the land to him to secure the payment of the loan, there is no question that the personal estate is chargeable. It is not easy to discover any real difference between such a case and a case where the purchaser assumes the mortgage debt, thereby in effect borrowing of the original mortgagee, or of the person from whom he purchases the equity. There certainly is no difference in legal principle, unless in the latter case it can be said that the purchaser has not bound himself personally to the mortgagee for the payment of the debt. In Thompson v. Thompson, 4 Ohio St. 333, it was determined that the purchaser of an encumbered estate, if he agree to take it subject to the encumbrance, and an abatement is made in the price on that account, is bound to indemnify his grantor against the encumbrance whether he expressly promised to do so or not, a promise to that effect being implied from the nature of the transaction, and that in such a case his personalty is chargeable with the mortgage debt; but such is not the general course of authority.

Another decision that the assumption of the mortgage debt is sufficient to make it the purchaser's own so as to charge his personalty is found in O'Connor v. O'Connor, 88 Tenn. 76.

Woerner in his work on "The American Law of Administration," at page 1104 lays down the rule as follows, citing thereto the authorities we have just considered: "At common law the personalty being the primary fund for the payment of debts, the heir or devisee may call upon the executor to exonerate the land by discharging the mortgage debt out of the personal estate, on the ground that the personal estate had the benefit of the money for which the mortgage was given. But the testator may indicate the fund out of which the mortgage debt shall be paid, or devise the land cum onere; and the rule does not apply to estates purchased by the testator or intestate while under the encumbrance, unless he has made it his own debt."

In the case before us it is clear that the decedent did nothing to make the debt her own at any time subsequent to the endorsement of the notes. She did not make it her own merely by taking the land subject to the mortgage. At the time of her decease she was under a contingent liability to the mortgagee by reason of her endorsement, but even if no conveyance of the land had been made to her, she would have been entitled to be reimbursed out of the trust estate in case she had been obliged to pay the trust notes as endorser, for the principles of equity would have entitled her to be subrogated to the rights of the mortgagee. This is remarked only to show that by endorsing the notes she did not make the debt her own in such a way that her personal estate would have had the debt to pay before the mortgage security had been exhausted. In other words, her personal estate would not have suffered by reason of her having endorsed the notes, unless the real estate proved insufficient to reimburse her.

In our judgment the situation is the same now, and the trust debt must be paid from the proceeds of the sale of the trust property. Consequently the demurrer must be overruled and the petition adjudged sufficient.

Court of Appeals of the District of Columbia.

HYTER MYERS, APPELLANT,
v.
THE DISTRICT OF COLUMBIA.

BOARD OF SCHOOL TRUSTEES; POWER TO CONTRACT.

The board of school trustees is without power to bind the District of Columbia to the payment of services rendered for the public schools, in the absence of any appropriation providing for the payment for such services or of express statutory authority granted to them to make such contracts.

No. 1448. Decided March 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,553, entered upon a demurrer to the declaration in an action to recover compensation for services additional to his employment as janitor of a school building. Affirmed.

Mr. J. H. Ralston, *Mr. F. L. Siddons*, and *Mr. W. E. Richardson* for the appellant.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

The appeal herein is taken to review a judg-

Digitized by Google

ment entered after hearing the case upon a demurrer to the amended counts of the declaration. As originally filed the declaration contained five counts, three of which were withdrawn and the remaining two amended. As amended the first count of the declaration in substance charges that the appellant, the plaintiff below, on October 1, 1891, being then in the employ of the appellee as janitor of Manual Training School No. 2, was requested by a member of the board of school trustees, and with the approval and consent of said board, to perform the duties of assistant engineer; that no compensation was agreed upon but that the appellee by its said agents promised and agreed to pay him for such additional services a reasonable compensation and upon the strength of which promises he continued to work; that he faithfully performed the duties requested of him and acted as assistant engineer until July 23, 1901; that the performance of the duties by him were known to and accepted by the appellee; that many times during the performance of such services he requested of the appellee payment for his work, to which answer was made that he could not then be paid but eventually would be; that because of this extra work he was obliged to have a helper during a great portion of the time, whom he paid out of his salary as janitor; that the value of his services as assistant janitor was $30 per month or a total for the entire time of $3,532, for which, with interest from July, 1901, with costs, he claims herein, having demanded payment from the appellee, which was refused.

The second amended count differs from the first only in alleging an employment as night janitor from October 15, 1891, to July 23, 1901, the other averments of the count being the same as in count 1 and judgment being demanded for a similar amount, with interest.

The demurrer runs to the entire amended declaration and presents these matters of law:

"1. That the board of trustees of the public schools had not, nor had any alleged agent of the said board of trustees, authority to bind the District of Columbia to the payment of any services rendered for the said public schools, in the absence of an appropriation providing for the payment of such services.

"2. The plaintiff has not alleged in its declaration any cause of action against the District of Columbia as a municipal corporation.

"3. And for other reasons apparent on the face of the declaration."

The first ground of demurrer raises the question of the power of the board of school trustees to bind the District of Columbia to the payment for services rendered for the public schools, in the absence of any appropriation providing for the payment for such services or in the absence of any express statutory authority granted to them to make such contracts.

The court below having sustained the demurrer, the appellant presents the following assignment of errors:

"1. The court below erred in holding that the board of trustees of the public schools had not authority to bind the defendant appellee to the payment of the services rendered by the plaintiff, as set forth in the first and second counts of his declaration, in the absence of an appropriation specifically providing for the payment of such services.

"2. The court below erred, if it so decided, that the plaintiff had not alleged in his declaration any cause of action against the defendant as a municipal corporation.

"3. The court below erred in sustaining said demurrer."

It is contended on behalf of the appellant that authority for the board of trustees to employ him as an assistant engineer and night janitor is found in the act of June 25, 1864 (13 Statutes at Large, 187), the material part of which, so far as it relates to the contention, reads as follows:

"It shall be the duty of the school board to provide suitable and convenient houses or rooms for holding schools for colored children, to employ and examine teachers therefor, and to appropriate a proportion of the school funds . . . to the building or renting of school rooms, and other necessary expenses pertaining to said schools, to exercise a general supervision over them, to establish proper discipline, and to endeavor to promote a thorough, equitable, and practical education of colored children in said portion of the District."

This provision of law was in force when the so-called "organic law" of the District, approved June 11, 1878, went into effect, which abolished the old board of school trustees and vested the authority to appoint a new board in the Commissioners of the District of Columbia. After authorizing the appointment of such a board the act provided that said trustees should have the powers and perform the duties in relation to the care and management of the public schools which were then authorized by law. It further appears that said act imposed certain limitations upon the Commissioners, and these limitations are equally binding upon the school trustees appointed by the Commissioners. As it is stated in appellant's brief that the court below relied upon the section containing these limitations, we deem it best to set forth the material part of the section:

"And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interest of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress." 20 Stat. L. 103.

In the face of this prohibition neither the Commissioners, nor the school trustees acting for them, could justify the appointment of appellant as assistant engineer and night janitor and bind the District to his payment unless authority therefor be found in the said act or be approved by Congress. The argument of appel-

Digitized by Google

lant is that the board of trustees appointed by the Commissioners were to have the same powers and duties relative to the care and maintenance of the public schools as, at the time of the passage of the act of 1878, was then vested in the then school trustees, and that authority is to be found in the act of June 25, 1864. It is claimed that such power is given by the clause "and other necessary expenses pertaining to said schools." When the act of June 25, 1864, is construed in the light of the act of June 11, 1878, we are far from being convinced that under the clause referred to the school trustees were authorized to exercise their discretion as to what were the "necessary expenses pertaining to said schools," and enter into all manner of contracts relating thereto, the money to pay which had not been appropriated by Congress. Conceding such power would open wide the doors for expenditures which would neither meet the approval of the Commissioners of the District nor of Congress. As is well said by counsel for appellee:

"It is a matter of common knowledge that the school estimates, like other items of public expenditures, are made up each year and transmitted by the Commissioners to Congress, and that the appropriations for the schools are based upon these estimates, some of them being passed entire, some cut down, and some stricken out altogether. The argument for the plaintiff, however, is that the board of school trustees may bind the District by a contract for services, although Congress has refused to appropriate funds for that very purpose. In other words, the board and not Congress is the sovereign authority in the District of Columbia as to such matters or as to any matters pertaining to the expenditure of public funds for the schools. The proposition being reduced to a question of power between Congress and the board of school trustees need not be pursued further. The conclusion is obvious."

Unless it appear that a court of competent jurisdiction has construed the act of 1864, when read in the light of the act of 1878, to warrant such contracts as the one in question, we do not feel justified in trying to spell out such a construction as here contended for, however much we may be impressed with the equities of the particular case before us. Rather it would seem to us the duty of a claimant, such as is the appellant, to look to Congress for relief rather than to the courts. The latter would not be justified in overruling the plain intention of Congress by vesting legislative duties in the Commissioners or in the board of school trustees selected by them. The long delay of appellant in attempting to enforce his claim is persuasive in showing that he performed his additional duties, knowing that he could not be paid without authority being given the board of trustees by Congress. The original declaration alleges "that he could not be paid at that time because of the necessity for congressional appropriation."

In The District of Columbia v. Bailey, 171 U. S. 161, the court, in referring to the Commissioners of the District of Columbia, said:

" . . . These officers are without general power to contract debts or to adjust and pay the same; that, on the contrary, the statutes expressly deprive them of such power, and limit the scope of their authority to the mere execution of contracts previously sanctioned by Congress, or which they are authorized to make by express statutory authority. The necessary operation of these provisions of the statutes is to cause the District Commissioners to be merely administrative officers, with ministerial powers only. The sum of the municipal powers of the District of Columbia are neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials."

And further on is to be found the following statement:

"It can not be doubted that if the District Commissioners themselves had seen fit to pass a resolution reciting that the appropriation by Congress for the improvement of the streets had been exhausted, and that a given sum of money was set aside to pay a claim for damages preferred against the District for having contracted when there was no appropriation, such action would have been, under the statutes, ultra vires."

By analogy, no more could the Commissioners, and much less the school trustees, exceed the appropriation for school purposes and enter into a valid contract with this appellant to employ him as assistant engineer and night janitor. Not only was there no money to compensate him, but, as above stated, he knew the fact. There was no contract made with him to pay him a specific sum. This fact, coupled with his failure to make any serious attempt to enforce his claim for a period of some ten years, shows the evils that would arise from attempting to override the express statutory enactments by a judicial construction thereof.

In the view we take of the case it is unnecessary to refer to the second or third counts of demurrer.

No error having been committed by the trial justice, it follows that the judgment of the court below should be affirmed with costs, and it is so ordered.

Affirmed.

IDA DOTEY, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

SIDEWALKS; OBSTRUCTIONS IN PARKING; WATER PLUG; NEGLIGENCE.

1. The sidewalks of the city of Washington extend from the curb line bounding the carriageway of the street to the building line of the houses; they are wholly the property of the United States, and wholly subject to the municipal authorities of the District.
2. Whether a water plug be placed in the main sidewalk, or in the portion of the sidewalk leading to the house and known as the parking, it is the duty of the municipal authorities to see that it does not become a dangerous obstruction to those having occasion to use the sidewalk.
3. In an action for personal injuries, it appeared that between the granolithic sidewalk and the steps of the house there was a brick walk depressed some 6 or 9 inches below the granolithic sidewalk, and in this brick walk was a water plug about 1 foot from the

Digitized by Google

lower step of the house which projected some 6 or 9 inches above the brick pavement. Plaintiff, in seeking to enter the house on a stormy night first stumbled over the depression in the brick walk, and then had her foot caught against the water plug, and was thrown against the steps and injured. Held, that the question of defendant's negligence was for the jury, and the trial court erred in directing a verdict for defendant.

No. 1488. Decided March 21, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,335, entered upon a verdict directed by the court in an action for personal injuries. Reversed.

Mr. J. H. Ralston, *Mr. F. L. Siddons*, and *Mr. Eugene A. Jones* for the appellant.

Mr. A. B. Duvall and *Mr. E. H. Thomas* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit at common law, instituted in the Supreme Court of the District of Columbia, to recover compensation from the District for personal injuries sustained by the plaintiff through the alleged negligence of the authorities of the District in permitting a defective condition of one of the sidewalks in one of the streets of the city of Washington. The facts of the case, about which there seems to be no substantial controversy, are these:

About 9 o'clock on the evening of April 13, 1903, when the weather was unpropitious and it was raining and blowing hard, the plaintiff, a seamstress, being on W street northwest, in the city of Washington, between Fourteenth and Fifteenth streets, and on the north side of W street on her way to visit at a house No. 1439 W street, wherein resided another seamstress, turned from the granolithic sidewalk to enter the house, and, there being a brick walk of about 3 or 4 feet between the granolithic sidewalk and the steps of the house, depressed some 6 or 9 inches below the granolithic sidewalk, and in this brick walk, a little distance from the center towards one side of the walk, and standing a little over 1 foot from the outer edge of the lowest step of the house, a water box or water plug projecting some 6 or 9 inches above the brick pavement, she first stumbled over the depression of the brick pavement, which in the darkness she had not noticed, and then had her foot caught against the water plug, and was thrown violently against the steps and was injured. There were two street lamps on the square, the nearest about 50 feet away; but the light, so far as it affected the locality of the plaintiff's accident, was more or less intercepted by a tree standing on the sidewalk. There was some "parking," as it is called, inside the line of the granolithic pavement and on both sides of the brick pavement leading to the house from the granolithic pavement. It appears in evidence that the walks had been in the condition stated for more than a year before the plaintiff's accident; that several persons had stumbled over the water plug before the plaintiff, and that a few days after the accident the place was fixed by bringing the sidewalk of brick up even with the water plug.

At the trial of the case there was testimony on both sides from which the foregoing facts appeared; and at the close of the testimony the defendant moved the court to direct the jury to return a verdict in its favor. The grounds of the motion are not stated in the record, and there is no opinion of the court from which the grounds can be learned. The appellant's brief alleges that they were: (1) That the plaintiff was guilty of contributory negligence; and (2) that the location of the place of the accident was outside of the public sidewalk. The motion was allowed, and verdict was returned and judgment rendered for the defendant. The plaintiff has appealed.

Undoubtedly there was error in the action of the trial court in directing a verdict for the defendant. There is no testimony whatever in the record before us tending to show contributory negligence on the part of the plaintiff, and that point has been abandoned by the appellee in the brief on its behalf, and the contention that the defendant is not liable for the condition of the water plug for the reason that it was outside of the public sidewalk and within what is designated as the parking, is wholly without merit.

The sidewalks of the city of Washington extend from the curb line bounding the carriageway of the street to the building line of the houses. They are wholly the property of the United States, and they are wholly subject to the control of the municipal authorities of the District of Columbia. That a portion of these sidewalks should be in a measure withdrawn from the public travel upon them and set apart as parking does not change or diminish in any manner the control of the District over them. This is a mere matter of convenience and of municipal ornamentation. Many things are allowed on the sidewalks, such as trees, carriage steps, grass plots adjacent to the curb line, fire-plugs, and the like, things of beauty or of convenience or of necessity, which of themselves impede travel, and yet are not nuisances, but of which everyone is bound to take notice. Wolf v. D. C., 33 Wash. Law Rep. 137; Howes v. D. C., 2 D. C. App. 188: 22 Wash. Law Rep. 41. And so, likewise, the portions of the sidewalks adjacent to houses, and known as parking, are withdrawn from general use by the public as sidewalks and are committed to the immediate care and custody of the adjacent owners or occupants. And it may well be that pedestrians wandering into these spaces, when they have been marked by being converted into grass plots, or otherwise in some distinctive manner segregated from the parts reserved for public travel, can not hold the District of Columbia liable for any obstruction which they may encounter there. But the parking, so called, from which the public travel is excluded, does not mean, and was never intended to mean, all the portion inside the general line of travel. The paths to the houses are as much parts of the sidewalks now as they ever were. The control of the municipal authorities over them is as complete as it has ever been. The adjacent owner may not disturb that path any more than he can any other part of the sidewalk without the consent of the municipal authorities. He may not pave it as he pleases. He may not substitute one pavement for another. He may not elevate or depress it, except with the permission

Digitized by Google

of the municipal authorities. Indeed, even as to the grass plots, which actually constitute the parking, he must use them in entire subordination to the superior control of the municipality.

Then as to these water plugs, they are put down by the municipality, and the adjacent owner has no control over them and no right to interfere in any manner with them, except by permission of the municipal authorities, and whether they are placed in the main sidewalk or in the portion of the sidewalk leading to the house, if they are placed in either, it is the duty of the municipal authorities to see that they do not become dangerous obstructions to those having occasion to use the sidewalks.

The contention of the appellee would tend to throw upon the adjacent owner the burden of keeping the portion of the sidewalk leading to his house, and any water plug that may have been constructed therein by the municipal authorities, in safe condition. That is the necessary result of their argument, for if they themselves are not responsible, then the adjacent owner must, or at least should be, or else no one is responsible for dangerous obstructions on certain parts of the public highways of the city of Washington. The argument is not advanced in so many words, but that is the result of it; and the result is sufficient to show the absurdity of the contention.

These considerations are so plain and obvious that it seems strange to us that they were overlooked at the trial of the case. There is no substantial difference in principle between this case and that of Mosheuvel v. D. C., 191 U. S. 247, except that this case is a very greatly stronger one for the plaintiff. There was grave, although insufficient, ground in that case for the defense of contributory negligence on the part of the plaintiff; there is none whatever in the case under consideration. There is no reasonable ground for the denial of negligence on the part of the District in either. It is claimed that there is a difference, because in the Mosheuvel case the record shows the projecting water plug which caused the plaintiff's injury to have been "in the sidewalk," and it does not appear whether there was any parking in the street. But, as we have stated, this is of no consequence whatever.

We think that it was error to withdraw this case from the jury, and for this error the judgment appealed from must be reversed, with costs. The cause will be remanded to the Supreme Court of the District of Columbia with directions to vacate the judgment and the verdict of the jury therein, and to award a new trial. And it is so ordered.

Reversed.

CHARLES WHITE, APPELLANT,

v.

POSTAL TELEGRAPH AND CABLE COMPANY.

COMMON CARRIERS; MESSENGER SERVICE; TRANSPORTATION OF MONEY.

1. A company engaged in the business of supplying messenger service to the public is in a certain sense and to a certain extent a common carrier, and liable upon proof of negligence.
2. There is no presumption that such a company assumes to act as a commont carrier in the transportation of money; and its assumption of that status must be affirmatively proved by the party alleging it.
3. Plaintiff's attorneys were furnished by defendant with a messenger to whom they delivered a letter addressed to real estate agents containing a request for a check. The agents, however, enclosed the amount in money in an envelope and delivered it to the messenger. The latter claimed to have delivered it to an employee of plaintiff's attorneys, but this was denied. It was not the custom of defendant to accept money for transportation; and the messenger was not notified that the envelope contained money. *Held* that the defendant was not liable, and the trial court properly directed a verdict in its favor.

No. 1517. Decided April 4, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,642, entered upon a verdict returned by direction of the Court. Affirmed.

Mr. G. L. Baker and *Mr. E. B. Sherrill* for the appellant.

Mr. W. W. Millan and *Mr. R. E. L. Smith* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment in favor of the defendant-appellee entered upon a verdict of the jury found by direction of the court. The action was brought originally in a justice court, where judgment was given for the plaintiff, and from that judgment an appeal was taken to the Supreme Court of the District of Columbia, which resulted in the judgment which is now here for review. As is usual in this class of cases there were no written pleadings and the bill of exceptions presents all that is before us as to the form of the action and the various steps taken therein after it came into the Supreme Court of the District.

Upon the trial it appeared that Douglass & Douglass, a firm of lawyers, called a messenger from the office of the Postal Telegraph and Cable Company, a corporation doing business in the District of Columbia, a part of its business being that of supplying messenger service to the public. The boy was given a letter to deliver to Gasch Brothers and directed to get an answer. The letter was delivered to a clerk in the office of Gasch Brothers, who receipted for the same and also gave to the boy an envelope said to have contained $75. The clerk did not tell him that the envelope contained money, nor does she know whether he saw her place the money in it. He denies that he knew that there was money in the envelope and testifies that he gave what he received to a stenographer in the office of Douglass & Douglass, from whom he received the first letter. This is denied. There is a conflict of testimony as to when the loss of the money was first known to Douglass & Douglass, but the weight of evidence is that it was not known to the appellee until some two or three weeks after the occurrence. It appears that no receipt was taken by the boy when he claims to have delivered the answer. So far as appears, he was not furnished by the company with any blank for that purpose. It does appear however that later in the day of the transaction he was sent back to the office of Douglass & Douglass to get authority for the charge for the service to them and that such authorization was written on the back of the receipt signed by Gasch Brothers' clerk. It

Digitized by Google

seems that Douglass & Douglass were the attorneys or agents for the appellant to collect interest, when due, upon certain notes, the makers of which made payment through Gasch Brothers. Witnesses called on behalf of the appellee testified that it was not its custom to carry money packages except at the risk of the owners, but it is admitted by them that no general or special notice of such custom is given to customers. For the services rendered by its messengers charges are made according to the distance covered and not according to the size or value of the letter or parcel.

In passing, it may be said that in all the larger cities there are now companies engaged in this line of service, and undoubtedly they are in a certain sense and to a certain extent common carriers. They must serve all who require their services impartially, and undoubtedly they are liable upon proof of negligence, and under some circumstances, and always by special contract, they may make themselves insurers.

It is strenuously contended by counsel for appellee that the action is wrong in form; that the action is ex contractu; that it should have been an action ex delicto. He cites Sanford v. American District Telegraph Co., 34 N. Y. Supp. 144, and Hirsch v. American District Co., which we find reported in 90 N. Y. Supp. 464. They bear out his contention, and the former case discusses the two forms of action at considerable length, and concludes that recovery could not be had in an action based on contract, but could, on proper proofs, be had in an action ex delicto. Leave was given to go to the Court of Appeals, but no appeal appears to have been taken. In the absence of a decision of a court of last resort, and still more because, in the absence of written pleadings and in view of the different and conflicting statements of counsel as to the grounds upon which the court directed a verdict, we do not deem it advisable to pass upon the question, but prefer to decide the appeal on other grounds. Conceding that appellee is a common carrier, we think it by no means follows that there was sufficient evidence to warrant or require the case to be submitted to the jury. The weight of authority is in favor of the proposition that there is no presumption that a carrier of the class to which the appellee belongs assumes to act as a common carrier in the transportation of money, and that the assumption of that status must be affirmatively proved by the party alleging it. Am. & Eng. Ency. of Law, vol. 6, p. 258. In the case at bar it appears that it is not the custom of the appellee to accept money for transportation. The company was not informed of the nature of the service required, and beyond this it appears that the service required was not one involving the delivery of currency. On the contrary, the letter intrusted to the messenger called for something else. It said, "Kindly send check by bearer." Neither the appellee nor Douglass & Douglass authorized Gasch Brothers to send bank notes, or any other form of money by the messenger. We think it was negligence on their part to send money instead of a check, and, doubly so, without notifying the boy that the envelope contained money. The messenger was the agent of the appellee, and his custody was the company's custody, and his default the company's. The converse is equally true. Absence of notice to him was lack of notice to the company. While the messenger doubtless had authority to accept whatever was intrusted to him, he was without express authority to contract for the carriage of money, and, doubly so, with a third party. To what extent Gasch Brothers made the messenger their agent to deliver the money to Douglass & Douglass, and thereby relieved the appellee of any claimed liability, is an interesting question, but one not necessary to be here decided.

While there is more or less conflict as to the extent of liability of carriers of the class in question, we find a general line of cases which hold that, under the circumstances disclosed by this record, common carriers would not be liable. In Sewall v. Allen, 6 Wend. 335, it was held that a steamboat company which, by its act of incorporation, was made liable as a common carrier was not a common carrier of bank bills unless it were shown that it had made the carriage of such packages a part of its ordinary business.

In Chicago and Aurora R. Co. v. Thompson, 19 Ill. 578, it was held that the authority of an agent to receive packages and the like does not imply power to receive bank bills. To make a common carrier liable notice should be given that the package contains money.

In Hayes v. Wells, Fargo & Co., 23 Cal. 185, common carriers of letters enclosed in envelopes were held not liable for articles of special value contained in them unless informed at the time of the receipt of the letter of the value of its contents. This seems to us a salutary rule as applied to these so-called messenger companies. They employ lads, and when valuables are to be transported it is but fair that the employer should be informed of the nature of the service required so that it may select one of tried integrity. It was because the nature of the service required was made known to the company that it was held liable in American Dist. Tel. Co. v. Walker, 72 Ind. 454, cited by appellant. The boy also in fairness should be notified so that he may exercise necessary care.

There is little force in appellant's contention that by accepting 20 cents the appellee ratified the messenger's act in undertaking to safely transmit the money in question. The record discloses that the charge was entered on Douglass & Douglass' bill among other items, and presumably upon the date of the transaction, which was long before the loss was communicated to the company, and it would be a very harsh ruling that would predicate ratification on the fact that the bill was sent out without the cancellation of the item.

In the light of what the record discloses we are not prepared to say that the trial judge erred in directing a verdict for the defendant. He was justified in construing the evidence in the most favorable light for the defendant and we see no good reason for disturbing his ruling and much to warrant it.

The judgment appealed from should be affirmed, with costs, and it is so ordered.

Affirmed.

Only the best of printing done at this office.

Digitized by Google

Master and Servant—Knowledge of Increased Hazard.—Knowledge of the increased hazard resulting from the dangerous proximity to the rails of a railway scale box held not imputable to a switchman. Texas and P. Ry. Co. v. Swearingen, U. S. S. C., 25 Sup. Ct. Rep. 164.

Master and Servant—Railroads, Negligence.—In action for death of a servant, owing to the master's negligence, held, that the doctrine of "last clear chance" was not applicable as against defendant. Holland v. Seaboard Air Line Co., N. Car., 49 S. E. Rep. 359.

Accident Insurance—Health Policy, House Confinement.—A health insurance company has a right to make absolute confinement to the house a condition precedent to the right of recovery.—Dunning v. Massachusetts Mut. Acc. Assn., Me., 59 Atl. Rep. 535.

Adjoining Landowners—Water from Roof.—Where a landowner so constructs his house that water from his roof flows on the premises of an adjoining landowner, it is a violation of such adjoining landowner's right of property.—Huber v. Stark, Wis., 102 N. W. Rep. 12.

Adverse Possession — Constructive Possession.—Where the owner of a tract is in possession of a part of the land, he has constructive possession of the whole tract as against an adverse claimant of the part not occupied by such owner.—Peden v. Crenshaw, Tex., 84 S. W. Rep. 362.

Homicide—Evidence, Stained Garments.—To admit evidence of an analysis of stains on the garment of a defendant, accused of murder, the identity must first be established, and afterwards that it has not been tampered with.—State v. McAnarney, Kan., 79 Pac. Rep. 137.

Homicide—Intent to Kill.—Where one shoots with intent to kill an intended victim, it is immaterial, on a prosecution for killing a different person, whether he saw the person who was killed by the shot when he fired.—Gater v. State, Ala., 37 So. Rep. 692.

Homicide — Threats, as a Justification. — Threats alone will not justify a killing, but may be considered in connection with any overt act of the deceased at the time of the killing.—Taylor v. State, Ga., 49 S. E. Rep. 303.

Landlord and Tenant—Written Lease, Parol Agreement.—An oral agreement for the furnishing of additional steam heat, made before a renewal, held not to entitle the tenant to such heat free of cost after renewal by a lease silent in that respect. Slack v. Knox (Ill.), 72 N. E. Rep. 746.

Life Insurance—Suicide.—If a person does not understand the consequences of the act when taking his own life, he does not commit suicide, within a benefit certificate, making it void if death is so caused. Knapp v. Order of Pendo (Wash.), 79 Pac. Rep. 209.

Master and Servant—Assumed Risk.—A servant held not entitled to recover for injuries caused by his selection of a hazardous, instead of a safe, method equally available. Illinois Cent. R. Co. v. Swift (Ill.), 72 N. E. Rep. 737.

Master and Servant—Fellow Servants, Scope of Employment.—Where the injured employee was acting within the scope of his authority, an instruction is properly refused that plaintiff could not recover if his position when injured was unauthorized. Young v. O'Brien, Wash., 79 Pac. Rep. 211.

NEW EDITION NOW READY

Collier on Bankruptcy

FIFTH EDITION, 1905

Sheep, 1084 Pages, $6.30.

MATTHEW BENDER & CO.
Law Publishers Albany, N. Y.

1657

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Fountain Peyton, Solicitor
In the Supreme Court of the District of Columbia.
The — day of February, 1905.
Polly Holmes v. James Holmes and Alice Walker.
24,917. Equity.

The object of the suit is to secure a divorce on the ground of adultery. On motion of Fountain Peyton, solicitor for the complainant herein, it is, this 2d day of March, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOMAS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 19-3t

Digitized by Google

Legal Notices.

Wilson & Barksdale, Solicitors

In the Supeme Court of the District of Columbia. Cornelia C. Ashe et al., Complainants, v. Maria G. Bradley Dewey et al., Defendants. Equity, No. 25,244.

The object of this suit is to establish title to the following described real estate lying and being in the county of Washington, District of Columbia, and known and distinguished as a tract of land lying west of that part of the city of Washington formerly Georgetown, commonly called Fowler's Hill, containing 4.3938 acres, more fully described in the bill of complaint; also a tract of land lying south of the Washington and Great Falls Electric Railroad containing 1.1368 acres, more fully described in said bill of complaint. On motion of the complainants, by Wilson & Barksdale, their solicitors, it is, this 8th day of May, 1905, for good cause shown, ordered that **John R. Livingston**, or his unknown heirs, alienees, or devisees, and each of them, and all other persons interested, cause their appearance to be entered herein on or before the rule day of June, 1905; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for four weeks before said rule day in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

---

H. W. Sohon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Ellen French**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. WILLIAM B. FRENCH, 506 E. Cap. st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,792. Administration. 19-3t

---

I. J. Costigan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Abbie B. Clark**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1905. ETHEL P. CLARK, Columbia Hospital. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,826. Administration. 19-3t

---

Newton & Gillett, John B. Larner, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Sophia Sautter, Deceased.
No. 12,872. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named in said will, it is ordered this 12th day of May, A. D. 1905, that notice be and hereby is given to **Henrich Menges**, Darmstadt; **Johannis Menges**, Eltville am Rheim; **Elizabeth Loth**, Trohe bei Giessen; **Catherine Velton, nee Rohrbach**, Leihgestern bei Giessen, and **Christianna Weber, Maria Klug, Louis Dern**, and **Carl Dern**, all of Grossen Linden bei Giessen, all of said parties residing in Germany, and to all others concerned, to appear in said court on **16th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

---

Legal Notices.

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Morris Keim**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of May, 1905. ALFRED H. KEIM, 812 Md. ave. N. E.; ABNER B. KELLY, Wash. Gas Light Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,910. Administration. 19-3t

---

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Tinnella M. Alexander**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 2d day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,168. Administration. 19-3t

---

Lester & Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Agnes M. Beuchert, Deceased.
No. 12,867. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by John A. Ruppert and Lena Beuchert, it is ordered this 11th day of May, A. D. 1905, that notice be and hereby is given to **Daisy Sauter, Eva Singleton, Joseph Wirth, and Antonia Rohrman**, and to all others concerned, to appear in said court on **Wednesday, the 14th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

---

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Henry H. Wells**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 29th day of May, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 11th day of May, 1905. GEO. W. WHITE; AMERICAN SECURITY AND TRUST COMPANY, by James T. Hood, Secretary. By Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 9876. Administration. 19-3t

Digitized by Google

Legal Notices.

E. F. Colladay, Solicitor

In the Supreme Court of the District of Columbia.

Mary Ann Shekell, Alice E. Masterson, Jane I. Elmore, Ellen I. Masterson, Katharine C. Masterson, Anna L. Masterson, and Charles B. Masterson, Complainants, v. Theresa Masterson, a minor, and Joseph I. Masterson, Defendants. No. 25,319. Equity Docket No. 56.

The object of this suit is to have the complainant Alice E. Masterson declared to hold in trust for the benefit of all the parties to this suit, the title to lot thirty-one (31) in Starr and Metcalf's subdivision of square numbered three hundred and two (302) in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 112, of the records in the office of the surveyor of the District of Columbia; to have the wills of Jane Everard and Hugh Masterson, deceased, construed; and to have sale made of said lot and the proceeds thereof distributed to the parties to this suit in accordance with the terms of the said wills. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainants, it is this 5th day of May, A. D. 1905, ordered that the defendant, Joseph I. Masterson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-3t

---

Stanton C. Peelle, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Oxias S. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. LURENA J. MILLER, 19 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,901. Administration. 19-3t

---

A. S. Worthington and Joseph D. Wright, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Kengla**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1905. EPHRAIM S. RANDALL, 8th St. Wharf S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,245. Administration. 19-3t

---

Hallam & Hallam, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George Fouse, Deceased.
No. 12,861. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by Patty C. H. Fouse, it is this 9th day of May, A. D. 1905, ordered that notice be and is hereby given to **Nerva Fouse and Phoebus Fouse, and to Charles H. Fouse**, if alive, or if not to any issue of his, and to all others concerned, to appear in said court on **Monday, the 18th day of June, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 19-3t

Legal Notices.

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Sidney Emil Rosenthal**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. JAMES ERNEST ROSENTHAL, 932 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,892. Administration. 19-3t

---

Chester Howe, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Henry M. Gitt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. DAVID L. GITT, 628 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,896. Administration. 19-3t

---

Filed May 10, 1905.—J. R. Young, Clerk.

John R. Shields, Solicitor

In the Supreme Court of the District of Columbia.

Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James S. Davis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of January, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. KATE IRLAND DAVIS, 1333 Roanoke st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,616. Administration. 19-3t

Digitized by Google

Legal Notices

George R. Linkins, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

John B. Harry, Complainant, v. The Unknown Heirs, Alienees, or Devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott(nee O'Reilly), and Margaret Kuhns (nee O'Reilly), Defendants.

Equity No. 25,286. Docket .

The object of this suit is to establish in complainant a fee-simple title by adverse possession to the northerly twenty-five and thirty-five hundredths (25.35) feet front on River Road by the full depth of lot six (6) and all of lots seven (7) and eight (8) in block five (5) and all of lots one (1), two (2) and three (3) in block four (4) of John M. Barry's subdivision of parts of "Friendship" and "Mount Airy" in the District of Columbia, as per plat thereof recorded in county subdivision book 8, page 123, of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, it is this 9th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, or devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott (nee O'Reilly), and Margaret Kuhns (nee O'Reilly)**, both mediate and immediate, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order; otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return day, it appearing to the court upon good cause shown, based on the affidavit filed herein, that further publication is unnecessary. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

---

Edwin C. Dutton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mariner A. Pierson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **22d day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1905. JOHN L. MARTIN, 509 4th st. S. E., Wash., D. C.; F. F. NINDE, Colonial Beach, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,852. Admn. 19-3t

---

Charles J. Murphy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Annie Partridge**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. CHARLES J. MURPHY, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,767. Administration. 19-3t

---

SECOND INSERTION.

Edwin C. Dutton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Emma Sedgwick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of April, 1905. EDWIN C. DUTTON, 416 5th st. N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,881. Administration. 18-3t

Legal Notices.

E. L. Schmidt, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Johanna Kern**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. ALBERT C. SCHIFF, 326 9th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,891. Administration. 18-3t

---

T. L. Jeffords and Milton Strasburger, Solicitors

In the Supreme Court of the District of Columbia.

Alexander E. B. Alford v. Thomas Orme et al.
In Equity. No. 25,332.

The object of this suit is to have partition, by sale, of original lot numbered nine (9) in square thirty-one (31), in the city of Washington, District of Columbia. On motion of the complainant, it is this 4th day of May, 1905, ordered that the defendant, **William Sullivan**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

---

Mackall & Maedel, Attorneys

In the Supreme Court of the District of Columbia. Theodore J. Mayer et al., Plaintiffs, v. The Security Milling Co., a Corporation, Defendant.
At Law, No. 47,612.

The object of this suit is to recover of the defendant the sum of six hundred and thirty-two dollars and seventeen cents ($632.17) as damages for the breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 3d day of May, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Buhrman, Asst. Clerk. 18-3t

---

B. P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Edward C. Halliday, Deceased.
No. 12,877. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Henrietta M. Halliday, it is ordered this 4th day of May, A. D. 1905, that notice be and hereby is given to **the unknown heirs at law of Edward C. Halliday**, descendant of Edward Cairns, who died in Scotland, in the Kingdom of Great Britain, in 1819, and to all others concerned, to appear in said court on **Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary L. Reddick, Deceased.
No. 12,855. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Philip Stewart, it is ordered this 1st day of May, A. D. 1905, that notice be and hereby is given to **Leroy Faulk, Rufus Faulk, Maria Faulk Pitz, and Joshua Faulk,** and to all others concerned, to appear in said court on **Monday, the 5th day of June, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

---

C. Albert White and W. Mosby Williams, Solicitors

In the Supreme Court of the District of Columbia.

Charles W. Fairfax v. Unknown Heirs, etc., of James Small, Deceased, et al.
Equity No. 23,999.

C. Albert White and W. Mosby Williams having reported an offer from William J. Holtman of $800.00, all cash, for lots 17 and 18 in Small's subdivision in square 828 in the city of Washington, District of Columbia, on the conditions and said offer, subject to the payment to Moore & Hill, Inc., of 3% commission, as set forth in said report, it is, therefore, this 1st day of May, 1905, ordered that said offer be accepted and the sale of said lots ratified and confirmed on the **31st day of May, 1905,** unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

---

John Selden, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court for the said District.
In re Estate of Margaret Edes, Deceased.
No. 12,883.

Upon consideration of the petition heretofore herein filed by Thomas Hyde, J. Hubley Ashton, and Henry H. Flather, praying that a certain paper writing, bearing date the 15th day of March, 1905, and purporting to be the last will and testament of Margaret Edes, late of the city of Washington, in the District of Columbia, spinster, deceased, and which is now on file in the office of the register of wills of the said District, may be admitted to probate and record, both as to realty and as to personalty, as and for the last will and testament of the said Margaret Edes, deceased, and that letters testamentary thereunder may be granted unto the said petitioners, and it appearing to the court that, of the persons who, but for the execution of the said paper writing, would, or might, be entitled to, or interested in, the estate, or in some part of the estate, of the said decedent, as her heirs at law, or next of kin, the following, to wit, Sarah Smull, Ellen Smull, Elizabeth F. Focke, Margaret Ellen Meredith, Alice Jane Justins, Zaidee Harriman, Ethel Smull, Barston Smull, George W. Smull, Herbert Smull, and Dorothy Smull, are non-residents of the District of Columbia, and have been returned not to be found by the marshal thereof, it is now, this 1st day of May, 1905, on motion of Mr. Selden, solicitor for the petitioners, by the court, ordered that **Friday, the 30th day of June, 1905,** be, and the same is hereby, appointed for the appearance before the court, holding a Probate Court, of each of the above-named non-residents, to show cause why the said prayers of the said petition should not be granted. Provided a copy of this order be published once in each of three successive weeks in The Washington Post, a newspaper of general circulation in the said District, and also in The Washington Law Reporter, the last in time of such publications to be made not less than thirty days in advance of June 30, 1905; and provided, also, that a copy of this order, as published, be mailed to each of the said non-residents at his or her last known postoffice address. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 18-4t

Legal Notices.

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William E. Tinney,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of April, 1905. CHARLES W. BOYLE, 416 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,875. Administration. 18-3t

---

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of James Donohoe, Deceased.
No. 12,834. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret Donohoe, the executrix named in said will and testament, it is ordered this 28th day of April, A. D. 1905, that notice be and hereby is given to **Mrs. Kehoe,** a sister, residing in the city of Syracuse, State of New York; **Margaret Donohoe,** a sister, residing in Rathangan, County Wexford, Ireland; **the children of Mary Kelly,** a deceased sister, and the **unknown heirs at law and next of kin of said deceased,** and to all others concerned, to appear in said court on **Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

---

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **William H. Payne,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 22d day of May, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 2d day of May, 1905. LEIGH ROBINSON, 1333 F. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,117. Administration. 18-3t

---

Lambert & Baker, Solicitors

In the Supreme Court of the District of Columbia.

Nannie Nora Hyman vs. John B. Hyman et al.
Equity, No. 25,297.

The object of this suit is to obtain a decree for sale of lot numbered fifty-five (55), in square numbered two hundred nine (209), in the city of Washington, District of Columbia. It appearing to the satisfaction of the court that Charles M. Hyman is a non-resident, and the subpœna issued has been returned by the marshal not to be found, it is this 2d day of May, 1905, ordered that defendant, **Charles M. Hyman,** cause his appearance to be entered herein on or before the first rule day occurring on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of first publication of this order, otherwise this cause be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and Washington Times once a week for three successive weeks prior to said date. THOS. H. ANDERSON, Justice. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 18-3t

Digitized by Google

Legal Notices.

THIRD INSERTION.

Millan & Smith, Solicitors

In the Supreme Court of the District of Columbia.
Mary C. Avery et al. v. James M. Bennett et al.
Equity No. 24,183.

Upon consideration of the report of William W. Millan and W. Mosby Williams, trustees, herein filed, showing that they have sold lot eight (8) in square thirty-five (35) in the city of Washington, District of Columbia, to Mary C. Avery and Rebecca J. Bennett, for twenty-four (24) cents a square foot, it is this 24th day of April, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of May, A. D. 1905.** Provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

John M. George, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Charles B. Hinton, Deceased.
Administration No. 12,840.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by Elizabeth Hoeke, it is ordered this 24th day of April, A. D. 1905, that notice be and is hereby given to Charles P. Hinton, and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

Cole & Donaldson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles C. Cole,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. R. GOLDEN DONALDSON, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,849. Administration. 17-3t

Wm. L. Browning, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John Stewart,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1905. WILLIAM L. BROWNING Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,843. Administration. 17-3t

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Winnie S. Simpson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. MAUD E. CHAPMAN, 10 Summer ave., Anacostia, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,805. Administration. 17-3t

Legal Notices.

Marion T. Clinkscales, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Ada Comfort et al., Complainants, vs. Henry Willis, Defendant. Equity No. 24,942. Docket No. 55.

ORDER CONFIRMING TRUSTEE'S SALE NISI.

Marion T. Clinkscales, trustee in the above-entitled cause, having reported the sale of the south one-half of lot numbered nine (9), in square numbered ten hundred and sixty-nine (1069), together with the improvements thereon, to Charles E. Harris, at and for the sum of seven hundred and seventy-five ($775), it is this 24th day of April, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the **24th day of May, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

H. D. Gordon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel M. Whitside,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of April, 1905. CARRIE M. WHITSIDE, Bethesda, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,633. Administration. 17-3t

J. Harry Smith, Atttorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Silas J. Beckley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. HOWARD BECKLEY, 2519 M st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,878. Administration. 17-3t

L. H. Pool, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles G. Thorn,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of April, 1905. AMANDA J. THORN, 1321 Baltimore street. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,845. Administration. 17-3t

Stuart McNamara, Solicitor

In the Supreme Court of the District of Columbia.
Irene Jones, Petitioner, v. Don Jones and Gertrude Thompson, alias Gertrude Prall, Defendants.
No. 24,496. Equity Docket No. 54.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, Don Jones, on the ground of adultery. On motion of the complainant, it is, this 14th day of April, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Evening Star. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-3t

Digitized by Google

Legal Notices.

William L. Eiterich, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna Maria Fleischhauer, Deceased.
No. 12,815. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julius Th. Fleischhauer and Edith M. Phoelus, it is ordered this 20th day of April, A. D. 1905, that notice be and hereby is given to **Rosa Schultz, nee Fleischhauer, in Kimberly G. W., South Africa,** and to all others concerned, to appear in said court on **Tuesday, the 23d day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

---

Stuart McNamara, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Patrick Danaher,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 11th day of May, 1905, at 11 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of April, 1905. DANIEL E. DANAHER, Executor, by Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,981. Administration. 17-3t

---

Wm. G. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bernard H. Johnston, Deceased.
No. 12,786. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **James M. Johnston** and **William G. Johnson,** it is ordered, this 20th day of April, A. D. 1905, that notice be and hereby is given to **Violet Johnston, a minor,** and to all others concerned, to appear in said court on **Wednesday, the 24th day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

---

R. M. Parker, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Nancy D. Bishop, Deceased.
No. 10,732.

Samuel S. Yoder, executor herein, having reported to the court that he has received an offer to purchase sublot seventeen (17) in square No. sixty (60), in the city of Washington, District of Columbia, for the sum of $800.00 cash, of which the sum of $50.00 has been paid and the balance to be paid on final ratification of sale, and also an offer to purchase lot eighteen (18) in square No. seven hundred and fifty-eight (758), of the said city and District, as described in the proceedings herein for the sum of $5,150.00 cash, of which the sum of $200.00 has been paid, the balance to be paid on final ratification of sale. It is, this 25th day of April, 1905, ordered that said offers be accepted and said sales be ratified and confirmed, unless cause to the contrary be shown on or before the **19th day of May, 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 17-3t

---

Legal Notices.

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Theodore M. Rudd,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 15th day of May, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of April, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,007. Administration. 17-3t

---

Erskine Gordon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Eli E. Kirby, Deceased.
No. 12,835. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Evander French, it is ordered, this 26th day of April, A. D. 1905, that notice be and hereby is given to **George H. Kirby, Charles B. Kirby, and the unknown next of kin of Eli E. Kirby, deceased,** and to all others concerned, to appear in said court on **Wednesday, the 31st day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day and at least three times in some daily newspaper in Burlington, Vermont. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

---

Charles S. Muir, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ellen Flynn, Deceased.
No. 12,841. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Isaac H. Saunders, it is ordered this 27th day of April, A. D. 1905, that notice be and hereby is given to the unknown next of kin and heirs at law of said Ellen Flynn, and to all others concerned, to appear in said court on **Monday, the 29th day of May, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest. Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

---

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Susan E. Detrick,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of April, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1905. EDWARD H. THOMAS, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 17-3t

Digitized by Google

Legal Notices.

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward R. Morcoe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ROBERT M. MORRISON, 617 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,862. Administration. 17-3t

D. W. Baker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clara P. Bateman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of April, 1905. FRANCIS E. BROCKWAY, 202 A st. S. E.; CHARLES A. KRAM, Wash. Loan & Trust Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,865. Administration. 17-3t

Edward S. Bailey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Urban Gebhart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of October, A. D. 1905**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. ELIZABETH GEBHART, by Edward S. Bailey, her Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,864. Administration. 17-3t

James Hamilton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **LaRhett L. Livingston**, late of the United States Army, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. MARY EATON LIVINGSTON, Room 806, Wash. Loan & Trust Bldg., care of James Hamilton. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,423. Administration. 17-3t

Robert H. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles E. Persons**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. AGNES ELIZABETH PERSONS, 611 F st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,881. Administration. 17-3t

Legal Notices.

Enoch L. White, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Jane Thumlert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1905. E. L. WHITE, Pacific Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,833. Administration. 17-3t

FIFTH INSERTION.

Daniel W. O'Donoghue, Solicitor
In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.
mar. 10-17, apr. 7-14, may 12-19

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer**, deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 20

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 823.

WASHINGTON, D. C. - - - - - MAY 19, 1905

CONTENTS.

Editorial 305
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Benjamin F. McCaully, appellant, v. The United States 306
Madison Whipple, appellant, v. Eugene E. Gaddis, use, etc 309
D. V. Brown, appellant, v. Carl Petersen 310
Legal Notices 313

Death of Mr. William J. Miller.

In the death of Mr. William J. Miller, which occurred at his residence in this city, on Monday, May 15, 1905, the bar of the District has lost one of its oldest and most honored members. Mr. Miller was in his seventy-third year, and had made his home in this city since boyhood. He began life as an employee of the Baltimore and Ohio Railroad Company, and while so engaged he studied law and was admitted to the bar. He was a member of the bar of the old Circuit Court of this District, and his death leaves but three such members surviving—Mr. Wm. F. Mattingly, Mr. Nathaniel Wilson, and Mr. Eugene Carusi. For a number of years Mr. Miller was associated with Mr. Carusi in the practice of the law. The partnership was dissolved in 1893, since which time he has practiced in connection with Mr. T. Percy Myers.

Mr. Miller was a lawyer of fine ability, and his personal character was of the highest type. He has been prominently identified with the affairs of the District, and organized charity found in him a most helpful friend. He enjoyed to an unusual degree the respect and esteem of the members of the bar, nearly all of whom he counted as personal friends.

Conditions on the back of a void pass are held, in McNeill v. Durham & C. R. Co. (N. C.), 67 L. R. A. 227, to be without effect upon the rights of the person who is attempting to use it for transportation.

Carriers—Injury to Passengers—Negligence of Conductor.

In Spinney v. Boston El. Railway, decided April, 1905, by the Supreme Judicial Court of Massachusetts, 73 N. E. 1029, the action was for personal injuries received by a passenger on an electric street car. It appeared that plaintiff was standing in the car, all the seats being occupied, and was thrown to the floor because of a jolt of the car as it moved over a crossing. The evidence for the plaintiff tended to prove that she and the conductor were the only persons standing in the aisle, and that the plaintiff, after having been taken from her footing by the jolting, was hanging from a car strap when the conductor, thrown from near the front of the car to the place where she was standing, forcibly came against her, causing her to fall, he falling upon her; also, that the jolt or jolts were very violent, and were caused in part by the turning on of the electricity for the purpose of moving the tongue of an electrical switch, as well as by the crossing of the car over other tracks laid lengthwise in the street. On behalf of defendant there was evidence tending to show that there were other passengers standing in the aisle; that the conductor did not fall upon or against the plaintiff, and that there was no unusual or unreasonable jolt. The court held that the conduct of the conductor of a car, while in the car, is in a sense official conduct, for which the company is responsible to a passenger injured thereby, if such conduct—as in carelessly falling against him and injuring him—is negligence, regardless of whether the conductor is, in general, competent or incompetent, or whether or not the company might reasonably know of his incompetency.

Note—Bona Fide Purchaser—Discount by Bank.

In City Deposit Bank Co. v. Greene, decided April, 1905, by the Supreme Court of Iowa 103 N. W. 96, it is held that a bank, by discounting a note for a depositor and giving him credit for the proceeds on his deposit account, does not, so long as the deposit is not drawn out, become a bona fide purchaser, so as to be protected against infirmities in the paper. The trial court instructed the jury as follows: "Where a bank discounts paper for a depositor and gives him credit upon its books for the proceeds of such paper, it is not a bona fide holder for value, so as to be protected against infirmities in the paper, unless, in addition to the mere fact of crediting the depositor with the proceeds of the paper, some other and valuable consideration passes. Such a transaction simply

Digitized by Google

creates the relation of debtor and creditor between the bank and the depositor, and so long as that relation continues and the deposit is not drawn out, the bank stands in the same position as the original party to whom the paper was made payable, even though the bank took the paper before maturity and without notice." It was held that this was a correct statement of the law.

It was further held that a note, though in form imposing joint and several liability on the makers, may be shown by the contract pursuant to which it was executed, to obligate each maker to pay only his proportionate share of the note.

A telegraph company receiving a message for transmission is held, in Swan v. Western U. Teleg. Co. (C. C. A. 7th C.), 67 L. R. A. 153, to be bound to notify the sender in case the line is obstructed so that the message can not be sent within a reasonable time, so as to give him an opportunity to avail himself of other modes of conveying the desired information to the sendee. A note to this case discusses the question of duty of telegraph company to notify sender of message if it can not be promptly transmitted or delivered.

To entitled the sendee to sue for failure promptly to transmit and deliver a telegram, it is held, in Frazier v. Western U. Teleg. Co. (Or.), 67 L. R. A. 319, that the telegraph company must know, or be chargeable with notice, that the message is for his benefit.

Statutes providing a summary remedy for a landlord to obtain possession of leased premises are held, in Kaufmann v. Liggett (Pa.), 67 L. R. A. 353, not to deprive equity of jurisdiction of a suit to determine the rights of the parties under a clause in the lease giving a right to renewal at a rental to be fixed by arbitrators, since the remedy provided by them is not adequate.

The insertion in a renewal lease of a clause giving the tenant the right to remove trade fixtures is held, in Radey v. McCurdy (Pa.), 67 L. R. A. 359, not to be necessary to enable him to remove, before the termination of the extended period, fixtures which he might have removed before the expiration of the original term.

The fact that a person other than the wrongdoer, as a mere gratuity, pays to one injured as the result of his negligence a sum equal to the amount he would have earned had he been able to work during the period of his disability, is held, in Nashville, C. & St. L. R. Co. v. Miller (Ga.), 67 L. R. A. 87, not to mitigate the damages due by the wrongdoer to the injured party for lost time. The subject of mitigation of damages for personal injury by fact that injured person has received from some source other than the wrongdoer money because of the injury is treated in a note to this case.

Court of Appeals of the District of Columbia.

BENJAMIN F. McCAULLY, APPELLANT, v. THE UNITED STATES.

CONTEMPT; CORRUPT SOLICITATION OF JUROR; PRESENCE OF COURT; EVIDENCE.

1. An attempt by corrupt solicitation to influence the conduct of a juror in a cause pending in court, made by the party charged therewith at his place of business, is a contempt committed in the presence of the court, within the meaning of section 725 Revised Statutes, and punishable as such.
2. Appellant was charged with a contempt of court because of an unlawful attempt to corrupt a juror therein. It appeared that two days before the trial of the cause in which the juror was sworn, which grew out of an embezzlement of railroad tickets, he had twice gone to the residence of the juror and expressed to members of the latter's family a desire to see him; that the juror went to appellant's place of business, and appellant then stated to him that there was a man in trouble; that a railroad company was trying to down him; that the juror then stated that he was on the jury and could not talk, and left the place. The only evidence on behalf of appellant was as to his good character. *Held*, that the evidence was sufficient to establish the charge against appellant, and that the court had jurisdiction, under section 725 Revised Statutes, to punish him for a contempt committed in the presence of the court.

No. 1529. Decided April 17, 1905.

APPEAL by respondent from a judgment of the Supreme Court of the District of Columbia, finding him guilty of a contempt of court. Affirmed.

Mr. A. A. Birney and *Mr. H. F. Woodard* for the appellant.

Mr. Morgan H. Beach and *Mr. J. S. Easby-Smith* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

The appellant was adjudged in the Supreme Court of the District of Columbia to be in contempt of that court for an unlawful attempt to corrupt a juror therein, and thereby corruptly to influence the administration of justice; and from the judgment therein rendered against him he has appealed to this court.

The proceedings were commenced by the filing of an affidavit by one of the assistant attorneys of the United States for the District of Columbia on January 13, 1905, wherein it was alleged, partly upon information and belief, in substance that the appellant, on November 26, 1904, with reference to a cause of the United States v. Samuel Gassenheimer, set down for trial in that court on that day, had corruptly attempted to influence one Benjamin F. Shaw, who was at the time a juror in that court and liable to be called as such in said cause. Therepon a rule to show cause why he should not be punished for contempt of court was issued and served, with a copy of the affidavit, upon the appellant. The latter appeared and moved to quash the rule; but the motion was overruled. Then he pleaded "not guilty," and testimony was taken both for and against him, upon which the court made the following finding:

"The court doth find from the evidence as follows: That, upon the 26th day of November, 1904, there was pending in the court here a certain indictment, No. 23,253, wherein the United

Digitized by Google

States was complainant and one Samuel Gassenheimer was defendant, which indictment duly charged him, the said Gassenheimer, with a criminal offense against the law of the District of Columbia; that he, the said Gassenheimer, had theretofore pleaded 'not guilty' thereto; that, upon said 26th day of November, 1904, the said indictment, and the issues joined upon said plea, stood regularly upon the calendar of this court for trial upon the 28th day of November next ensuing; that upon the 19th day of September, 1904, the regular petit jury for the October term, 1904, of this court was duly summoned, and on the 6th day of October, 1904, qualified and empaneled; that one Benjamin F. Shaw was one of those regular petit jurors for said term, himself duly summoned, qualified, and empaneled, and so had continued and was such upon said 26th day of November, 1904; that all aforesaid was on said day known to said Benjamin F. McCaully; that, on the said 28th day of November, 1904, the said indictment and the issues arising upon said plea thereto came on for final trial in the court here before the Hon. Dan Thew Wright, justice, and the jury; that a petit jury was duly empaneled from amongst said regular jurors and sworn to try the same; that said Benjamin F. Shaw was one of the said jurors so empaneled and sworn; that on said 26th day of November, 1904, said Benjamin F. McCaully did address and talk to the said Benjamin F. Shaw of and concerning the said criminal cause so as aforesaid by indictment pending between the United States and Samuel Gassenheimer, criminal No. 23,253, with the corrupt intent and purpose at the time upon the part of him, Benjamin F. McCaully, unlawfully and corruptly to influence him, the said Benjamin F. Shaw, in the discharge of his duty as a juror as aforesaid, and with the intent at the time upon the part of him, the said Benjamin F. McCaully, thereby corruptly to obstruct the administration of justice in the cause so pending between the United States and the said Samuel Gassenheimer; and the court finds that he, the said Benjamin F. McCaully, did thereby unlawfully and corruptly undertake and attempt to obstruct the administration of justice, and that he is guilty of a contempt of this court; whereupon it is considered and adjudged by the court that the said Benjamin F. McCaully is guilty of a contempt of this court, and it is considered by the court that for his said offense the said Benjamin F. McCaully be imprisoned in the United States jail in and for the District of Columbia for the period of six months, to take effect from and including the date of his arrival at said jail."

The testimony was reduced to writing, and a bill of exceptions was taken by the defendant, whereby it appeared that, upon the conclusion of this testimony, he moved for the discharge of the rule against him on the ground that the court, as he claimed, was without jurisdiction to try him in a summary way without a jury, and that the evidence did not support the charge. The motion was overruled, and he excepted; and the cause is now before us for review.

It is conceded, and it could not well be denied, that an attempt corruptly to influence a juror in a cause pending in court, is a contempt of court and a most serious offense against the administration of justice. But the contention here on behalf of the appellant is, as it was in the court below: 1st. That there is no sufficient proof of the appellant's guilt, and 2d. That in any event, inasmuch as the alleged offense was charged, and the fact appeared in the evidence, to have been committed at a place remote from the court house and from the place where the court was sitting at the time, the court below was without jurisdiction to try the appellant and punish him without presentment by a grand jury and verdict of a petit jury in the usual mode of the administration of the criminal law. Of course, if either one of these propositions is well founded in law, the appellant should be discharged. But we are of opinion that neither one is tenable.

1. With reference to the first proposition, that of the supposed insufficiency of the testimony to sustain the charge against the appellant, it is true that at first sight the testimony is apparently meagre. But upon closer examination it will be found ample to constitute a prima facie case against the defendant, which he has made no effort to overcome. We may assume that the record contains the substance of all the testimony given in the case, although it does not in terms purport to do so, as it should when it is desired to have the ruling of the appellate court on the whole case. Gunnison County Commissioners v. Rollins, 173 U. S. 255. With the exception of some testimony to show good character on behalf of the defendant, the evidence is exclusively that given on behalf of the prosecution, and it is wholly uncontradicted. It shows that two days before the trial of the case, in regard to which the alleged influence was sought to be used, the defendant called twice at the residence of one of the jurors, and expressed to members of his family a desire to see him, the juror himself not being at home at the time; that thereupon the juror went to the defendant's place of business to know what he desired; that the defendant then stated to him that there was a man in trouble; that a railroad company was trying to down him; and that the juror then stated that he was on the jury, and could not talk, and walked out of the place of business. The case referred to was the case of United States v. Gassenheimer, which grew out of an embezzlement of railroad tickets from the Baltimore and Ohio Railroad Company; and it was shown that the appellant was personally and intimately acquainted with Gassenheimer; that on the trial of that case he had testified on behalf of Gassenheimer as to his honesty and good character, and that in his testimony in that case he had denied calling at the house of the juror.

The defendant made no attempt to break the force of this testimony. He did not take the stand himself as a witness, and he contented himself with the presentation of a certificate of good character from some of his associates. If his business with the juror had been legitimate it would have been easy for him to say so, and to state what that business was. But it is very clear that his purpose was to corrupt the juror and to influence him unduly in the case mentioned in which it was probable that he would

Digitized by Google

serve, and in which he did actually serve, as a juror. There can be no other reasonable inference from the testimony, and we think, therefore, that the testimony was sufficient to prove the appellant's offense.

2. The appellant's second proposition, namely, that the court was without jurisdiction to punish the appellant's offense, even if it was sufficiently proved, is based upon certain provisions of the Revised Statutes of the United States, which are taken to limit and restrict the power of the Federal courts to punish for contempts of their authority. These provisions are contained in sections 725 and 5399, which are taken from an act of Congress of March 2, 1831, 4 Stat. 488, and which are in the following terms:

"Sec. 725. The said courts (of the United States) shall have power to impose and administer all necessary oaths, and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority; provided, that such power to punish contempts shall not be construed to extend to any cases except the misbehaviour of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, jury, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

"Sec. 5399. Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness, or officer in any court of the United States, in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

It is argued that the appellant's offense, if we assume it to have been proven, is not punishable under section 725, under which the court proceeded in this case, as well as under the common law, inasmuch as it was not committed "in the presence of the court, or so near thereto as to obstruct the administration of justice," but at a distance from the court at the appellant's place of business, a half a mile or more away; but is punishable under section 5399 after a jury trial in the regular way, as all other offenses are tried and punished. It is admitted that it could be punished summarily under section 725, if committed within the court house, even in an obscure and out-of-the-way corner of it, or at or outside of its portals; because then it would come within the letter of the statute. The claim is that the place of solicitation of the juror being far removed from the court house, the statute expressly removes the act from the cognizance of the court as an act of contempt, and simply leaves it to be punished as an ordinary criminal offense under section 5399.

We can not assent to this view of the law. There is no possible difference between the corrupt solicitation of a juror at the court house door, or in the corridors of the court house, or in some obscure nook of the building, and a precisely similar corrupt solicitation at the home of the juror or the place of business of the corrupter. The offense is no greater in the one case than in the other, and its influence upon the administration of justice is precisely the same in both cases. We can not think that, in the enactment of the statute in question, Congress had any intention to institute a topographical discrimination between acts which have no possible relation to the matter of greater or less distance from the court house. As was said by Mr. Justice Brown of the Supreme Court of the United States, when sitting in the District Court, in re Schulenberg, 25 Fed. Rep. 211, the words of the statute "seem to refer rather to riotous or unseemly conduct in the court room, or in such immediate proximity thereto as to interrupt the sessions of the court or the orderly conduct of the business therein, and not to embrace constructive contempts of its authority." And the action of the appellant was at least a constructive, if not an actual contempt of the authority of the court.

In the determination of the question here involved we are not greatly aided by the adjudicated cases. In no one of them has this precise point arisen or been determined. In the case of Savin, 131 U. S. 267, it was held that an attempt in the court house to deter a witness from testifying was a contempt of court committed in the presence of the court and punishable under section 725 of the Revised Statutes. In the case of Cuddy, 131 U. S. 280, there was, as in the present case, an attempt corruptly to influence a juror, but the court notes the fact that it was not made to appear in the record where the act was committed, whether in the presence of the court or at a distance from it, and it specially reserved any determination of the question which is now before us. It was said by Mr. Justice Harlan, speaking for the court, in the conclusion of the opinion:

"Whether the attempt to influence the conduct of the juror was or was not, within the meaning of the statutes, misbehaviour so near to the court as to obstruct the administration of justice, however distant from the court building may have been the place where the appellant met him, is a question upon which it is not necessary to express an opinion."

In the case of one Brule, in the United States District Court for the State of Nevada, 71 Fed. Rep. 943, there was a contempt of court by the bribery of a witness to hide himself and remain away from the court. The act was done at a considerable distance from the court house, and yet it was held to be punishable as a contempt under section 725. This case is directly in point, and yet not so strong as that now before us, because, if we may recognize grades in such offenses, the corrupt solicitation of a witness is not as grave an offense as the corrupt solicitation of a juror.

By the opinion of the Supreme Court of the United States in the case of Cuddy, the question before us is left an open one, and it is incumbent upon us to determine it as best we may in the absence of authoritative enunciation from our tribunal of last resort. Upon reason and analogy and with due regard, as we think, both to the letter and the spirit of the statute, we are of opinion that, in the contemplation of the statute, the appellant's act was committed

Digitized by Google

in the presence of the court. As we have intimated, the question is not one of geography or topography, of propinquity or remoteness, but one of direct influence upon the administration of justice. The administration of justice is equally obstructed wherever the act is done; and the place of the solicitation is absolutely of no consequence whatever. Whether the act was done in the court house, or a mile or one hundred miles away, the result is precisely the same; the disturbance to the court is precisely the same. The act in its nature is not one dependent upon location for its greater or less influence on the administration of justice. A riotous disturbance in the court house, or so near thereto as to disturb the proceedings of the court, is a very different thing from a riot five or ten miles away, which by no possibility could interfere with those proceedings. In the case of such a disturbance the matter of location is a most important circumstance. But the bribery of a juror or the intimidation of a witness pollutes the fountains of justice at their source, and reach at once to the very seat and shrine of the administration of justice, whatever be the place where the formal act is done. Under such circumstances the court is wherever the juror or the witness is; and there is no question of locality in the case.

It often happens, and it was the general usage in former times, that juries are kept together during the trial of important cases, and are taken to their meals to hotels or restaurants at some distance from the court house. If while at such distance from the court house, can it be that, if they are corruptly solicited, the person who seeks to corrupt them is not guilty of contempt of court to be punished summarily as a contempt? And if, in trials extending over several days, they are permitted to disperse at night and go to their own homes, as is now usually the custom, can it be that corrupt solicitation of one of them at his own home is less a solicitation, and less an obstruction of justice, than if the solicitation were had within the purlieus of the court house? We find no good reason for any such distinction. Every juror is part of the court wherever he is. Under our common law the jury is as much a part of what may be designated as the machinery of the administration of justice as is the judge, and a corrupt attempt to influence the jury, or any individual member of it, is an offense differing only in degree from a similar attempt to corrupt the judge. Judge and jury are component parts of the court. An attempt upon the integrity of the jury or upon the integrity of any individual juror, is a direct attack upon the court, and the court is entitled to protect itself from all such attacks by the methods which the common law has established for the purpose, namely, by the way of summary proceedings for contempt of court.

Now, if it be true, as it seems to us to be, that an attack upon the integrity of an individual juror is an attack upon the integrity of the body to which he belongs—for it only requires the corruption of one to destroy the efficiency of the whole—and such attack, therefore, is a direct attack upon the court, how can it reasonably be argued that the act has not been done in the presence of the court? We scarcely know how it could come nearer home to being an obstruction to the administration of justice.

We are not unmindful of the considerations, so forcibly emphasized by counsel, which led to the enactment of the act of Congress of March 2, 1831, now embodied in the Revised Statutes as sections 725 and 5399, or of the great wrong that might sometimes be done by violent or irritable judges in the exercise of the somewhat arbitrary, and almost of necessity, autocratic power possessed by courts of justice to punish summarily for contempts of their authority. It is unfortunate that this power has sometimes been abused or used oppressively; but the abuse of the power, although it has been said, and very properly said, that there is no place in our governmental system for the exercise of irresponsible power, is no sufficient reason against the exercise of the power in proper cases. Its existence is essential for the existence of courts themselves. In no other way can they insure their efficiency or conserve their usefulness. The writ of habeas corpus will generally secure the individual citizen from oppression. But it is necessary at the same time to preserve unimpaired the power of courts of justice to punish for contempts of their authority. The one is just as essential as the other to the preservation of civil liberty; for civil liberty and the due administration of justice are necessary concomitants of each other.

There has been no question made of our right to entertain the appeal in this case, and we make none ourselves.

From what we have said it follows that the order appealed from must be affirmed. And it is so ordered.

Affirmed.

MADISON WHIPPLE, APPELLANT, v. EUGENE E. GADDIS, USE, ETC.

APPELLATE PRACTICE; QUESTION NOT RAISED IN TRIAL COURT.

There is no ambiguity in the expression "existing incumbrances," used in a deed of conveyance; and even if the expression "certain existing incumbrances" is ambiguous and open to oral explanation, the refusal of the trial court to allow defendant to state in what sense the parties used the words "existing incumbrances" will not be held error when the record fails to show that its attention was called to the use of the word "certain" in connection therewith.

No. 1502. Decided April 4, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,823, entered upon a verdict directed by the court in favor of plaintiff. Affirmed.

Mr. C. A. Brandenburg, *Mr. E. C. Brandenburg*, and *Mr. F. W. Brandenburg* for the appellant.

There was no appearance for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal taken from a judgment, in favor of the plaintiff-appellee, entered upon a verdict found by a jury upon the direction of the court.

The record is somewhat meager, and as there were no written pleadings we are somewhat in

Digitized by Google

the dark as to some of the events that may have been developed in the presentation of the case in the trial court.

It appears that the plaintiff originally brought suit in one of the justice courts of the District to recover the sum of $150, a balance alleged to be due him upon the sale and purchase of certain real estate. A judgment for the full amount, with interest and costs, was rendered in favor of the plaintiff, which was thereafter assigned to Campbell. Thereafter a second trial was had in the Supreme Court of the District, and under the instructions of the court, the jury found a verdict for the plaintiff-appellee for the full amount claimed, with interest and costs. A motion for a new trial was made, denied, and judgment upon the verdict ordered.

The assignment of errors, other than the general one that the court erred in directing the jury to return a verdict for the plaintiff, are these: First. In refusing to permit the appellant to explain to what incumbrances the expression "certain existing incumbrances" mentioned in the deed, referred. Second. In holding, as a matter of law, that the appellant was bound by the terms of the deed to assume the incumbrances, including taxes and assessments.

In order to decide whether these assignments of error are well founded, or even warranted, we must turn to the record to learn what transpired at the trial. The plaintiff was the only witness called in his own behalf and he testified that he sold the defendant certain houses for $300; that the defendant paid one-half of this amount and refused to pay the balance; that there were two trusts upon each house. Upon cross-examination he was shown the deed which showed that he had made certain incorrect statements which, however, have no special bearing on the point in controversy. The deed was delivered at or prior to the time of the payment of the one hundred and fifty dollars, but the examination of the title had not then been completed by the Columbia Title Company. The defendant, the only witness called in his behalf, gave his version of the transaction and testified, without objection, that the plaintiff assured him that the taxes were paid, but if anything was due he would pay. This, upon being recalled, and without objection, the plaintiff denied. The deed which was received by defendant and by him promptly recorded, discloses that the property was sold subject to "certain existing incumbrances." The defendant was asked upon his direct examination "in what sense the words 'existing incumbrances' was used by them" (the parties) "in the deed for the houses." The court, of its own motion, refused to permit the witness to answer the question on the ground that the understanding of the witness was incompetent as the writing spoke for itself. The first assigned error purports to be based upon this ruling, but upon comparing it with the record it will be seen that there is a fatal variance between them. The appellant was asked to explain the sense in which the words "existing incumbrances" were used, while the error is predicated upon the court's refusal to permit the witness to explain the expression "certain existing incumbrances," quite a different expression as admitted by appellant's counsel. He says, "It is undoubtedly the law that a covenant against incumbrances generally, or against 'any' or against 'all' incumbrances, covers taxes, general and special, assessed against the property at the time of conveyance." In the case at bar it appeared after the deed was delivered that there were taxes and assessments unpaid and outstanding against the property, and the appellant based his refusal to pay the balance of the purchase price upon this fact. There is no ambiguity, patent or latent, in the expression "existing incumbrances," and the court was clearly right in refusing to permit the witness to explain the the meaning of that term in the deed.

The record fails to disclose that the attention of the court was called to what is contended to be a qualifying word, i. e., "certain" and we have no right to assume anything which does not appear in the record. We must take it as presented and decline to pass upon a question not raised below. The first assignment of error is not based upon anything appearing in the record and is therefore found not to be well taken.

As to the second alleged error which is claimed to follow from the ruling of the court that the appellant was bound by the terms of the deed to assume the incumbrances, including taxes and assessments, we can only say that, as the objection to this ruling was a general one and not specific, we must find that it was based upon the ground that "existing incumbrances" did not cover taxes and assessments. Such a contention is not well founded. Taxes and assessments are incumbrances. There is nothing in the record to warrant a conclusion on our part, that, conceding for the sake of argument that the word "certain," as used in the deed, is ambiguous and open to oral explanation, the attention of the trial court was called to that word. The objection as made was general and did not point out the present contention of appellant. We do not feel required to nor justified in trying to find some ground for disturbing the ruling of the court below. There have been two trials, and two verdicts for the appellee, and in our opinion the judgment should stand. Appellant's ably considered brief deals with questions which are not presented by the record, and which, therefore, are in a certain sense moot.

We find no ground for reversing the judgment of the court below, and it is, therefore, affirmed, with costs.

Affirmed.

D. V. BROWN, APPELLANT,
v.
CARL PETERSEN.

Execution; Notice by Lienor of Claim to Chattels Levied Upon; Time of Giving Notice; Evidence.

1. A notice of claim to chattels levied on as the property of a judgment debtor, given on the day of sale under the execution, is in due time, where there is nothing in the record to show that the sale had actually been made when notice was given, and the evidence tends to show the contrary.
2. A person in possession of property under a lien is the owner of it against all the world and even against

Digitized by Google

the actual owner until his lien is paid; and no one has any right to disturb his possession without previous payment of his claim.

3. A landlord having in his possession property of his tenant as security for payment of the rent is entitled to maintain a proceeding to establish his right thereto as against a judgment creditor of the tenant who has caused an execution upon the judgment to be levied on said property; and he is not precluded from doing so by becoming a purchaser of the property at the marshal's sale.

4. Positive testimony uncontradicted and not inherently improbable is prima facie evidence of the fact which it seeks to establish, and the jury is not at liberty to disregard it.

No. 1515. Decided April 4, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,498, on a case appealed from a justice of the peace. Affirmed.

Mr. Victor H. Wallace for the appellant.

Mr. John W. Echols for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District, in a suit which originated before a justice of the peace, and it is a pertinent illustration of the inexpediency of the law which allows such appeals. It is understood that the costs incurred in bringing the cause here have very considerably exceeded the original amount in controversy. It is very true that sometimes in cases involving only small pecuniary amounts as important principles are involved as in cases of far greater magnitude as to amount. But we venture to suggest that such cases would be better reached and the purposes of justice better subserved by a modification of the law so as to place appeals from justices of the peace on a basis analogous to appeals from the Police Court, or to the matter of special appeals under the statute, which might be preferable.

The appellant here had a claim against one Archer L. Hood, an optician, for $68.40, and sued him and obtained judgment before a justice of the peace. A writ of fieri facias was issued to the marshal; and the marshal levied upon certain personal property in a store on F street, in this city, owned by the appellee, Petersen, who conducted there a jeweler's establishment. The property seized and taken by the marshal into his possession consisted of one grindstone, one picture, one electric motor, one switch board, shafting, and belt, of the value in all of about $60 or $70. These articles the officer removed from the place on F street, and placed them for sale under the execution at the place of business of an auctioneer on Pennsylvania avenue. All this happened between May 9 and May 22, 1903.

The judgment debtor then made claim for the property as exempt from execution; and trial was had of this issue before a justice of the peace, and judgment was rendered for the claimant. But a new trial was allowed, and on the new trial judgment was rendered for the creditor, Brown, and against the claimant, Hood, and the claimant appealed to the Supreme Court of the District. This was on June 4, 1903. The appeal would seem to have been abandoned.

Then the appellee Petersen came in and made claim to the articles levied upon. He gave written notice of his claim to the marshal on June 27, 1903; and the marshal gave notice to the justice of the peace, which was filed before the latter on July 1, 1903. Trial was set for July 7, 1903, but there were various delays and postponements and judgment was not rendered until September 30, 1903. It was adverse to the claimant, and he appealed to the Supreme Court of the District. There the case was tried de novo by the court with a jury, and testimony was heard for both sides, and the court at the close of it directed a verdict for the claimant and entered judgment in pursuance of the verdict. Upon a bill of exceptions, reserved at the trial, the creditor Brown has now appealed to this court from that judgment.

The bill of exceptions purports to contain all the evidence that was given in the case. It consists of the testimony of three witnesses, Petersen on his own behalf, the auctioneer for the defendant Brown, and the claimant's counsel for Petersen in rebuttal.

Petersen's testimony was to the effect that in April of 1903 he rented part of his store on F street to Hood for $25 a month, payable in advance; that he soon found that Hood was unable to pay in advance, and he (Petersen) demanded security; that Hood thereupon delivered to him as security the articles which he brought to the store and which are the articles before mentioned as levied on afterwards by the marshal; that he took the articles and placed them on his own side of the store, where they remained until the marshal levied upon them; that when the deputy marshal came to seize them the witness told him that he held them as security for rent to the amount of $50 then due to him from Hood, and would not give them up until his claim was paid; that the deputy marshal insisted upon taking them anyhow and told him that he (the witness) might put in a claim for them; and that the sum of $50 was then due as rent, which since then had been increased to $150.

For the defense the auctioneer, to whom the marshal had delivered the goods for sale, testified that he had sold them on June 27, 1903; that the electric motor had been bought by one Lease for $10, its full value; that the other articles had been purchased for Petersen by Hood as his agent for $51, of which $5 had been paid at the time of sale, and the residue remained unpaid; and that the articles so purchased by Hood for Petersen yet remained at the place of business of the witness.

In rebuttal it was testified that notice in writing of Petersen's claim was given to the marshal by Petersen's attorney on June 27, 1903.

1. The appellant contends that the appellee's claim was not made until July 1, 1903, and that it was too late, as the articles levied on had then been sold. But the testimony is that the appellee's claim was made to the marshal on June 27, 1903; and that the goods were sold on the same day. There is nothing in the record to show whether the sale was before or after the receipt of notice by the marshal, but as the law recognizes no fractions of a day, unless the circumstances demand it and there is testimony to the point, we must assume that the notice and the sale were simultaneous, and therefore that the notice was in due time. The marshal's notice to the justice of the peace that the claim

Digitized by Google

had been made and the auctioneer's retention of the articles sought to be sold, must be regarded as corroborative evidence that the claimant's notice was received in due time to stop the sale.

2. The appellant's next contention is that the appellee did not show such property in the goods in question as entitled him under the Code to maintain a claim of ownership. But this contention is without foundation in the law. The appellee had a lien on the property for the payment of his rent, which was something more than the tacit lien given to a landlord by the statute; and he had it in his actual possession as the qualified owner of it, subject to the divesting of his right by the payment of the claim. Now, it is elementary law, which needs no elaboration of argument or citation of authorities in support of it, that a person in possession of property under a lien is the owner of it against all the world and even against the actual owner until his claim is paid; and no one, not even the actual owner, has any right to disturb his possession, without previous payment of such claim. There is no doubt whatever that the appellee was entitled to maintain this proceeding. Nor was he precluded from maintaining it by his becoming a purchaser at the marshal's sale. His action in that regard was no more than a prudent precaution to save the property from sacrifice.

3. In the third place, the appellant contends that the jury might not have believed Petersen's testimony; that they were the sole judges of the facts, and that, therefore, the cause should have been submitted to them for their determination; and it is argued that there were several suspicious facts about the case which the jury should have been allowed to consider, and which might have had weight with them. Undoubtedly the case was not above suspicion as to some understanding between Petersen and Hood; but that understanding may have been entirely proper and legitimate, and it has long since been well established in our law that suspicion is not proof and can not be allowed to take the place of proof. The appellant's contention would require that every case of uncontradicted and unimpeached testimony should be submitted to a jury, when there is no countervailing testimony. But this is not the law. The law is that positive testimony uncontradicted and not inherently improbable is prima facie evidence of the fact which it seeks to establish it, and the jury is not at liberty to disregard it. Crane v. Morris, 6 Pet. 598; Kelly v. Morris, 6 Pet. 622; United States v. Wiggins, 14 Pet. 334; Quock Ting v. United States, 140 U. S. 417; Alexandre v. Machan, 147 U. S. 72.

We find no error in the record, and the judgment appealed from must therefore be affirmed, with costs.

And it is so ordered.

Affirmed.

That a defect in a street is part of the original plan of construction, is held, in Stone v. Seattle (Wash.), 67 L. R. A. 253, not to relieve the city from liability for injuries to travelers caused by it.

A residuary devise to testator's widow is held, in Waldron's Petition (R. I.), 67 L. R. A. 118, not to pass title, as against his children, to a burial lot upon which members of his family are buried. The character of estate or property of owner in burial lot is considered in a note to this case.

Officers of a corporation who secure subscriptions to its stock by fraud are held, in Mack v. Latta (N. Y.) 67 L. R. A. 126, to be properly joined in an equitable suit against the corporation to enjoin collection of the amount unpaid, and to secure the return of what has been paid upon the subscription.

A carrier transporting freight on platform cars to a station where it maintains a freight house, but no agent, is held, in Normile v. Northern P. R. Co. (Wash.), 67 L. R. A. 271, to be obliged to place the freight in the house in order to relieve itself from liability for freight lost through theft, unless it shows that it is not able to do so.

Where the same five persons compose both the directorate and the body of the stockholders of a corporation, it is held, in Crichton v. Webb Press Co. (La.), 67 L. R. A. 76, that two of these persons can not, by joining with a third, enter into contracts with the corporation, or fix their own salaries, or vote allowances to themselves, over the protest of their two other associates.

An attempt to break up the business of loan agents, and to secure their custom, by a rival, by statements that they are inattentive and neglectful, and have been guilty of fraudulent conduct for which their principal has taken the business from them, and that they are insolvent, is held, in Brown v. American Freehold L. M. Co. (Tex.), 67 L. R. A. 195, to give them a right of action for the injuries thereby inflicted upon them.

A lease by a corporation, engaged in the business of generating and furnishing electricity for public and private use, to a rival corporation in the city, for a period of ten years, of machinery and appliances used in generating electricity, by which it obligates itself not to engage in such business in the city during such period, and not to dispose of any of its property, machinery, or appliances retained by it for producing or generating in such city electric light and power, is held, in Keene Syndicate v. Wichita Gas E. L. & P. Co. (Kan.), 67 L. R. A. 61, to be in contravention of public policy and not sufficient to sustain an action to recover rents by the lessor or its assignee.

Digitized by Google

A railroad conductor, in signaling the engineer to back the engine for the purpose of effecting a coupling, is held, in Alabama G. S. R. Co. v. Baldwin (Tenn.), 67 L. R. A. 340, to act in his capacity as representative of the master, and not as a fellow servant of the brakeman, who is attempting to prepare the cars for the coupling; so that the master will be liable in case he acts negligently to the injury of the brakeman.

Placing an electric light in close proximity to a trolley wire at a curve is held, in Nelson v. Narragansett Electric Lighting Co. (R. I.), 67 L. R. A. 116, not to be the proximate cause of an injury to one struck by glass falling from the globe when shattered by a trolley leaving the wire, since failure to keep the trolley on the wire is prima facie negligence, and is the act of a responsible person intervening between the placing of the light and the injury.

One who accepts an agency to take charge of a house and lot belonging to his principal, collects the rents, pays taxes, and sees to repairs, and gives advice as to the value of the principal's unimproved farm lands, is held, in Van Dusen v. Bigelow (N. D.), 67 L. R. A. 288, thereby to assume a fiduciary and confidential relation, and to have no right to purchase such farm lands for himself without making full disclosure of all facts bearing on their value, material for the principal to know in order to act intelligently.

NEW EDITION NOW READY

Collier on Bankruptcy

FIFTH EDITION, 1905

Sheep, 1084 Pages, $6.30.

MATTHEW BENDER & CO.

Law Publishers Albany, N. Y.

1657

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

A. B. Duvall and A. Leftwich Sinclair, Attorneys
In the Supreme Court of the District of Columbia, Holding a District Court.
In the Mattter of the Opening of an Alley in Block Six, Ingleside, in the District of Columbia.
No. 657. District Court Docket.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An act to amend chapter fifty-five of an act entitled 'An act to establish a code of law for the District of Columbia,'" have filed a petition in this court, praying the condemnation of the land necessary for the opening of an alley in block numbered six (6), Ingleside, in the District of Columbia, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition, and marked "Exhibit D. C. No. 1;" and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in the aforesaid act of Congress. It is, by the court, this 16th day of May, A. D. 1905, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the **31st day of May, A. D. 1905, at 10 o'clock A. M.**, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be impaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 31st day of May, A. D. 1905. It is further ordered that a copy of this notice and order be served by the United States marshal for said District, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal, or his deputies, within the District of Columbia, before the said 31st day of May, A. D. 1905. By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 20-1t

A. B. Duvall and A. Leftwich Sinclair, Attorneys
In the Supreme Court of the District of Columbia, Holding a District Court.
In the Matter of the Opening of an Alley in Block 41, North Grounds Columbian University, and in Block 42 of University Park, in the District of Columbia. No. 659. District Court Docket.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An act to amend chapter fifty-five of an act entitled 'An act to establish a code of law for the District of Columbia,'" have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in block numbered 41, north grounds Columbian University, and in block numbered 42 of University Park, in the District of Columbia, as shown on a plat or map prepared by the said Commissioners and filed with their said petition as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia

Digitized by Google

Legal Notices.

or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in the aforesaid act of Congress. It is by the court, this 16th day of May, A. D. 1905, ordered that all persons having any interest in these proceedings be and they are hereby warned and commanded to appear in this court on or before the **31st day of May, A. D. 1905, at 10 o'clock A. M.**, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be impaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 31st day of May, A. D. 1905. It is further ordered that a copy of this notice and order be served by the United States marshal for said District, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal, or his deputies, within the District of Columbia, before the said 31st day of May, A. D. 1905. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 20-1t

---

A. B. Duvall and A. Leftwich Sinclair, Attorneys

In the Supreme Court of the District of Columbia, Holding a District Court.

In the Matter of the Condemnation of Land Necessary to Provide Proper Approaches for the Anacostia Bridge, in the District of Columbia.

No. 658. District Court Docket.

Upon consideration of the petition of the Commissioners of the District of Columbia, filed in the above-entitled cause, and on motion of counsel for said Commissioners, it is by the court, this 16th day of May, A. D. 1905, ordered that the clerk of this court issue a citation to **Philip Otterback, Patrick S. Bird, and Charles Scofield**, to appear in this court on the **2d day of June, A. D. 1905, at 10 o'clock A. M.**, to answer said petition and show cause why the prayers of said petition should not be granted and why the following described land in the District of Columbia, in fee simple, should not be condemned for the approaches to the Anacostia Bridge, in said District, namely, part of lot one (1) in square south of square 1001, beginning for the same at a point on the east line of said lot 45 feet south from the northeast corner thereof, and running thence south 1 foot to the south line of said lot 1; thence south 60 degrees 20 minutes east 69.56 feet; thence north 33 degrees west 95.277 feet; thence east with the north line of said lot 188.47 feet; thence south 33 degrees east 53.656 feet to the place of beginning, containing 5,271.14 square feet. Part of lot two (2) in said square south of square 1001, beginning for the same on the south line thereof at a point 47.31 feet east of the southwest corner of said lot and running thence east 42.69 feet; thence north 41.33 feet; thence west 69.53 feet; thence south 33 degrees east 49.274 feet to the place of beginning, containing 2,319.026 square feet. Part of lot three (3) in the aforesaid square, beginning for the same on the south line of said lot at a point 20.47 feet east of the southwest corner thereof, and running thence east 69.53 feet; thence north 21.46 feet; thence north 33 degrees west 22.10 feet; thence west 77.96 feet; thence south 8.48 feet; thence south 33 degrees east 37.59 feet to the place of beginning, containing 3,165.805 square feet. Part of lot four (4) in the aforesaid square, beginning for the same at the southwest corner of said lot and running thence east 77.96 feet, north 33 degrees west 47.70 feet; thence west 51.98 feet; thence south 40.0 feet to the place of beginning, containing 2,598.98 square feet. Part of lot five (5) in the aforesaid square, beginning for the same at the southwest corner of said lot and running thence east 51.98 feet; thence north 33 degrees west 35.77 feet; thence west 32.5 feet; thence south 30 feet to the place of beginning, containing 1,267.32 square feet. Part of lot six (6) in the aforesaid square, beginning for the same at the southwest corner of said lot and running thence east 32.50 feet; thence north 33 degrees west 1.936 feet; thence north 57 degrees east 10 feet; thence north 33 degrees west 24.96 feet; thence west 26.24 feet; thence south 28 feet to the place of beginning, containing 937.529 square feet. Part of lot seven (7) in the aforesaid square, beginning for the same at the southwest corner of said lot and running thence east 26.24 feet; thence north 33 degrees west 33.38 feet; thence west 8.06 feet; thence south 28 feet to the place of beginning, containing 480.225 square feet. Part of lot eight (8) in the aforesaid square, beginning for the same at the southwest corner of said lot and running thence east 8.06 feet; thence north 33 degrees west 14.8 feet; thence south 12.41 feet to the place of beginning, containing 50.007 square feet. Part of lot fourteen (14) in the aforesaid square, beginning for the same at a point on the south line of said lot at a point distant 40.78 feet east of the southwest corner thereof and running thence north 33 degrees west 74.87 feet; thence south 62.79 feet; and thence with the south line 40.78 feet to the place of beginning, containing 1,280.22 square feet. And it is further ordered that a copy of said citation be served by the United States marshal for the District of Columbia upon such owners of the aforesaid land and such persons interested therein as may be found by him within the District of Columbia. It is further ordered that all persons having any interest in these proceedings or the land to be condemned herein be, and they are hereby, warned and commanded to appear in this court on or before the **2d day of June, A. D. 1905**, and to answer said petition, and continue in attendance until the court shall have made its final order ratifying and confirming the report and award of the commissioners to be appointed by the court to appraise the value of the respective interests of all persons concerned in the aforesaid land and premises. It is further ordered that a copy of this order be published once in The Washington Law Reporter and once in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before said 2d day of June, A. D. 1905. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 20-1t

---

E. B. Hay, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

Estate of Anna L. Norville, Deceased.

No. 12,981. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edwin B. Hay, it is ordered this 17th day of May, A. D. 1905, that notice be and hereby is given to the heirs of the deceased and to all others concerned, to appear in said court on the **22d day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

---

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, who, with Elizabeth A. Goodman, now deceased, were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Helen M. Andrus**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 9th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of May, 1905. JOHN RIDOUT, Surviving Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,167. Administration. 20-3t

---

B. F. Leighton, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Theresa Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1905. JUAN WOODRUFF LEWIS, Brookland, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,889. Administration. 20-3t

Digitized by Google

Legal Notices.

Chas. T. Hendler, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Susan Turner, Deceased.
No. 12,723. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry J. McGowan, it is ordered this 16th day of May, A. D. 1905, that notice be and hereby is given to Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Lallie Ebenhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills, and unknown heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on Friday, the 16th day of June, A. D. 1905, at 10 o'clock, A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

---

B. F. Leighton and C. Clinton James, Attorneys
In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In re the Estate of Loraine Lipphard, Deceased.
No. 12,129 Admn. Docket 32.

It appearing to the satisfaction of the court that the notification of the trial of the issues relating to the validity of the paper writing bearing date the 27th day of April, A. D. 1898, purporting to be the last will and testament of Loraine Lipphard, deceased, has been, as to the following persons, to wit, William A. Lipphard, Alice Anderson, Thomas A. Anderson, Edward J. Pyle, and John Lipphard, returned "not to be found," it is this 15th day of May, A. D. 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial on the 15th day of June, next; and that a copy of this order, and of the issues heretofore framed, shall be published twice a week for four weeks in The Washington Post and once a week for four weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: James Tanner, Register of Wills.

ISSUES.

First. Was the said paper writing, dated April 27th, 1898, the last will and testament of the said Loraine Lipphard? Second. Was the said paper writing, dated April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, executed and attested in due form as required by law? Third. At the time of the execution by the said Loraine Lipphard, of said paper writing, dated April 27th, 1898, as her last will and testament, was the said Loraine Lipphard of sound and disposing mind, and capable of executing a valid deed or contract? Fourth. Was the said paper writing, bearing date April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, procured by the fraud or undue influence practiced upon her by any person or persons? Fifth. Was the signature of said Loraine Lipphard, to said paper writing, procured by force exercised upon her by any person or persons? 20-4t

---

B. H. Louchs, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Ephraim A. Greenough, Deceased. No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court that he has sold the two hundred and thirty-six lots situate in Falls Church, Virginia, as described and shown upon a plat and map of said tract filed with the report of such sale to M. E. Church for the sum of eight thousand and nine hundred dollars net, on the following terms: Two hundred and fifty dollars in cash, one thousand dollars within thirty days from the ratification of sale, and one thousand dollars per month thereafter until paid without interest until all is due. It is, therefore, this 15th day of May, 1905, ordered that sale be ratified and confirmed on the 15th day of June, 1905, unless cause to the contrary is shown before said last mentioned date. Provided that this order be published once a week for three successive weeks before said date in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

Legal Notices.

Edward A. Newman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen E. Bartley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ABRAM S. McCOY, Pension Bureau, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,890. Administration. 20-3t

---

Michael J. Keane, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Thomas J. McHugh, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. PATRICK J. DRURY, 210 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,918. Administration. 20-3t

---

John Rideout, Solicitor
In the Supreme Court of the District of Columbia.
Martha A. Mayse v. Brittania W. Kennon et al.
No. 25,289. Equity Docket No. 56.

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession to the west twenty-two feet and nine inches front by the full depth of lot four, in square eight hundred and eighty-two, in the city of Washington, District of Columbia. On motion of the complainant, it is this 16th day of May, 1905, ordered that Virginia Cassell and Alexander Cassell, and the unknown heirs, devisees, and alienees of the following persons, to wit, Thomas Peter, John Brown, John I. Clark, —— Brown, and —— Ives (late partners trading as Brown and Ives, formerly of Providence, Rhode Island), George Gibbs and Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter, next after the date of this order, good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 20-3t

---

William D. Hoover, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Frederick Rush, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 6th day of June, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,082. Administration. 20-3t

Digitized by Google

Legal Notices.

Robinson White, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Flavius J. Fisher**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. ELIZABETH P. FISHER, 3423 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,917. Administration. 20-3t

Thomas Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Dash**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. CREED W. CHILDS, by Thomas Walker, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,684. Administration. 20-3t

F. W. Matteson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Laura G. Meehan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. MARGARET L. SKERRETT, 1706 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,909. Administration. 20-3t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick Curtin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. HONORA CURTIN, 1223 N. Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,759. Administration. 20-3t

J. H. Lichliter, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re Estate of Frederick C. Grose, Deceased.
No. 12,405. Administration.

On consideration of the report of Washington Topham, administrator herein, that he has received an offer at private sale from Ellen O'Dea, to purchase the equity of redemption of lot No. 23, in block No. 13, of Middaugh's subdivision, Bloomingdale, District of Columbia, as the same is more particularly described in said report and the proceedings in this cause, for the sum of $880 cash, of which the sum of $100 has been paid and the balance to be paid on final ratification of sale. It is, this 12th day of May, 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **13th day of June, 1905**. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

Legal Notices

SECOND INSERTION.

H. W. Sohon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Ellen French**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. WILLIAM B. FRENCH, 506 E. Cap. st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,792. Administration. 19-3t

I. J. Costigan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Abbie B. Clark**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1905. ETHEL P. CLARK, Columbia Hospital. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,826. Administration. 19-3t

Newton & Gillett, John B. Larner, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Sophia Sautter, Deceased.
No. 12,872. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named in said will, it is ordered this 12th day of May, A. D. 1905, that notice be and hereby is given to **Henrich Menges**, Darmstadt; **Johannis Menges**, Eltville am Rheim; **Elizabeth Loth**, Trohe bei Giessen; **Catherine Velton**, nee **Rohrbach**, Leihgestern bei Giessen, and **Christianna Weber**, **Maria Klug**, **Louis Dern**, and **Carl Dern**, all of Grossen Linden bei Giessen, all of said parties residing in Germany, and to all others concerned, to appear in said court on **16th day of June, A. D. 1905**, at **10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

Fountain Peyton, Solicitor

In the Supreme Court of the District of Columbia.
The — day of February, 1905.

Polly Holmes v. James Holmes and Alice Walker.
24,917. Equity.

The object of the suit is to secure a divorce on the ground of adultery. On motion of Fountain Peyton, solicitor for the complainant herein, it is, this 2d day of March, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOMAS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 19-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

E. F. Colladay, Solicitor

In the Supreme Court of the District of Columbia.

Mary Ann Shekell, Alice E. Masterson, Jane I. Elmore, Ellen I. Masterson, Katharine C. Masterson, Anna L. Masterson, and Charles B. Masterson, Complainants, v. Theresa Masterson, a minor, and Joseph I. Masterson, Defendants. No. 25,319. Equity Docket No. 56.

The object of this suit is to have the complainant Alice E. Masterson declared to hold in trust for the benefit of all the parties to this suit, the title to lot thirty-one (31) in Starr and Metcalf's subdivision of square numbered three hundred and two (302) in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 112, of the records in the office of the surveyor of the District of Columbia; to have the wills of Jane Everard and Hugh Masterson, deceased, construed; and to have sale made of said lot and the proceeds thereof distributed to the parties to this suit in accordance with the terms of the said wills. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainants, it is this 5th day of May, A. D. 1905, ordered that the defendant, **Joseph I. Masterson**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-3t

---

Stanton C. Peelle, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Oxias S. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. LURENA J. MILLER, 19 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,901. Administration. 19-3t

---

A. S. Worthington and Joseph D. Wright, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Kengla**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1905. EPHRAIM S. RANDALL, 8th St. Wharf S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,245. Administration. 19-3t

---

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Henry H. Wells**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 29th day of May, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 11th day of May, 1905. GEO. W. WHITE; AMERICAN SECURITY AND TRUST COMPANY, by James T. Hood, Secretary. By Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 9876. Administration. 19-3t

Legal Notices.

Lester & Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Agnes M. Beuchert, Deceased.
No. 12,867. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by John A. Ruppert and Lena Beuchert, it is ordered this 11th day of May, A. D. 1905, that notice be and hereby is given to **Daisy Sauter, Eva Singleton, Joseph Wirth, and Antonia Rohrman**, and to all others concerned, to appear in said court on **Wednesday, the 14th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

---

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Morris Keim**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of May, 1905. ALFRED H. KEIM, 812 Md. ave. N. E.; ABNER B. KELLY, Wash. Gas Light Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,910. Administration. 19-3t

---

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Finnella M. Alexander**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 2d day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,168. Administration. 19-3t

---

Wilson & Barksdale, Solicitors

In the Supeme Court of the District of Columbia.

Cornelia C. Ashe et al., Complainants, v. Maria G. Bradley Dewey et al., Defendants. Equity, No. 25,244.

The object of this suit is to establish title to the following described real estate lying and being in the county of Washington, District of Columbia, and known and distinguished as a tract of land lying west of that part of the city of Washington formerly Georgetown, commonly called Fowler's Hill, containing 4.3988 acres, more fully described in the bill of complaint; also a tract of land lying south of the Washington and Great Falls Electric Railroad containing 1.1366 acres, more fully described in said bill of complaint. On motion of the complainants, by Wilson & Barksdale, their solicitors, it is, this 8th day of May, 1905, for good cause shown, ordered that **John R. Livingston**, or his unknown heirs, alienees, or devisees, and each of them, and all other persons interested, cause their appearance to be entered herein on or before the rule day of June, 1905; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for four weeks before said rule day in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

Digitized by Google

Legal Notices.

George R. Linkins, Solicitor

In the Supreme Court of the District of Columbia, Holding an Equity Court.

John B. Harry, Complainant, v. The Unknown Heirs, Alienees, or Devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott(nee O'Reilly), and Margaret Kuhns (nee O'Reilly), Defendants.

Equity No. 25,286. Docket .

The object of this suit is to establish in complainant a fee-simple title by adverse possession to the northerly twenty-five and thirty-five hundredths (25.35) feet front on River Road by the full depth of lot six (6) and all of lots seven (7) and eight (8) in block five (5) and all of lots one (1), two (2) and three (3) in block four (4) of John M. Barry's subdivision of parts of "Friendship" and "Mount Airy" in the District of Columbia, as per plat thereof recorded in county subdivision book 8, page 123, of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, it is this 9th day of May, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott (nee O'Reilly), and Margaret Kuhns (nee O'Reilly), both mediate and immediate, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order; otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return day, it appearing to the court upon good cause shown, based on the affidavit filed herein, that further publication is unnecessary. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

Edwin C. Duttun, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mariner A. Pierson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of April, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1905. JOHN L. MARTIN, 509 4th st. S. E., Wash., D. C.; F. F. NINDE, Colonial Beach, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,852. Admn. 19-3t

Charles J. Murphy, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Annie Partridge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. CHARLES J. MURPHY, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,787. Administration. 19-3t

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James S. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of January, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. KATE IRLAND DAVIS, 1633 Roanoke st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,616. Administration. 19-3t

Legal Notices.

Chester Howe, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Henry M. Gitt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. DAVID L. GITT, 623 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,805. Administration. 19-3t

Filed May 10, 1905.—J. R. Young, Clerk.

John R. Shields, Solicitor

In the Supreme Court of the District of Columbia. Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Sidney Emil Rosenthal, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. JAMES ERNEST ROSENTHAL, 932 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,892. Administration. 19-3t

Hallam & Hallam, Attorneys

In the Supreme Court of the District of Columbia, Holding a Probate Court.

Estate of George Fouse, Deceased.

No. 12,861. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by Patty C. H. Fouse, it is this 9th day of May, A. D. 1905, ordered that notice be and is hereby given to Nerva Fouse and Phoebus Fouse, and to Charles H. Fouse, if alive, or if not to any issue of his, and to all others concerned, to appear in said court on Monday, the 12th day of June, 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 19-3t

Digitized by Google

Legal Notices.

THIRD INSERTION.

Edwin C. Dutton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Emma Sedgwick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of April, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of April, 1905. EDWIN C. DUTTON, 416 5th st. N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,881. Administration. 18-3t

E. L. Schmidt, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Johanna Kern, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. ALBERT C. SCHIFF, 326 9th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,891. Administration. 18-3t

T. L. Jeffords and Milton Strasburger, Solicitors
In the Supreme Court of the District of Columbia.
Alexander E. B. Alford v. Thomas Orme et al.
In Equity. No. 25,382.

The object of this suit is to have partition, by sale, of original lot numbered nine (9) in square thirty-one (31), in the city of Washington, District of Columbia. On motion of the complainant, it is this 4th day of May, 1905, ordered that the defendant, William Sullivan, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

Mackall & Maedel, Attorneys
In the Supreme Court of the District of Columbia.
Theodore J. Mayer et al., Plaintiffs, v. The Security Milling Co., a Corporation, Defendant.
At Law, No. 47,612.

The object of this suit is to recover of the defendant the sum of six hundred and thirty-two dollars and seventeen cents ($632.17) as damages for the breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 3d day of May, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Buhrman, Asst. Clerk. 18-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

B. P. Mimmack, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward C. Halliday, Deceased.
No. 12,877. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Henrietta M. Halliday, it is ordered this 4th day of May, A. D. 1905, that notice be and hereby is given to the unknown heirs at law of said Edward C. Halliday, descendant of Edward Cairns, who died in Scotland, in the Kingdom of Great Britain, in 1819, and to all others concerned, to appear in said court on Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

Perri W. Frisby, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary L. Reddick, Deceased.
No. 12,865. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Philip Stewart, it is ordered this 1st day of May, A. D. 1905, that notice be and hereby is given to Leroy Faulk, Rufus Faulk, Maria Faulk Pitz, and Joshua Faulk, and to all others concerned, to appear in said court on Monday, the 5th day of June, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

John Selden, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court for the said District.
In re Estate of Margaret Edes, Deceased.
No. 12,883.

Upon consideration of the petition heretofore herein filed by Thomas Hyde, J. Hubley Ashton, and Henry H. Flather, praying that a certain paper writing, bearing date the 15th day of March, 1905, and purporting to be the last will and testament of Margaret Edes, late of the city of Washington, in the District of Columbia, spinster, deceased, and which is now on file in the office of the register of wills of the said District, may be admitted to probate and record, both as to realty and as to personalty, as and for the last will and testament of the said Margaret Edes, deceased, and that letters testamentary thereunder may be granted unto the said petitioners, and it appearing to the court that, of the persons who, but for the execution of the said paper writing, would, or might, be entitled to, or interested in, the estate, or in some part of the estate, of the said decedent, as her heirs at law, or next of kin, the following, to wit, Sarah Smull, Ellen Smull, Elizabeth F. Focke, Margaret Ellen Meredith, Alice Jane Justins, Zaidee Harriman, Ethel Smull, Barston Smull, George W. Smull, Herbert Smull, and Dorothy Smull, are non-residents of the District of Columbia, and have been returned not to be found by the marshal thereof, it is now, this 1st day of May, 1905, on motion of Mr. Selden, solicitor for the petitioners, by the court, ordered that Friday, the 30th day of June, 1905, be, and the same is hereby, appointed for the appearance before the court, holding a Probate Court, of each of the above-named non-residents, to show cause why the said prayers of the said petition should not be granted. Provided a copy of this order be published once in each of three successive weeks in The Washington Post, a newspaper of general circulation in the said District, and also in The Washington Law Reporter, the last in time of such publications to be made not less than thirty days in advance of June 30, 1905; and provided, also, that a copy of this order, as published, be mailed to each of the said non-residents at his or her last known postoffice address. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 18-4t

Digitized by Google

Legal Notices.

Lambert & Baker, Solicitors
In the Supreme Court of the District of Columbia.
Nannie Nora Hyman vs. John B. Hyman et al.
Equity, No. 25,297.

The object of this suit is to obtain a decree for sale of lot numbered fifty-five (55), in square numbered two hundred nine (209), in the city of Washington, District of Columbia. It appearing to the satisfaction of the court that Charles M. Hyman is a non-resident, and the subpœna issued has been returned by the marshal not to be found, it is this 2d day of May, 1905, ordered that defendant, **Charles M. Hyman**, cause his appearance to be entered herein on or before the first rule day occurring on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of first publication of this order, otherwise this cause be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and Washington Times once a week for three successive weeks prior to said date. THOS. H. ANDERSON, Justice. Test: J. R. Young, Clerk. By F. E. Cunningham, Asst. Clerk. 18-3t

Sheehy & Sheehy, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of James Donohoe, Deceased.
No. 12,834. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret Donohoe, the executrix named in said will and testament, it is ordered this 28th day of April, A. D. 1905, that notice be and hereby is given to **Mrs. Kehoe**, a sister, residing in the city of Syracuse, State of New York; **Margaret Donohoe**, a sister, residing in Rathangan, County Wexford, Ireland; **the children of Mary Kelly**, a deceased sister, and **the unknown heirs at law and next of kin of said deceased**, and to all others concerned, to appear in said court on **Tuesday, the 6th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **William H. Payne**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 22d day of May, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 2d day of May, 1905. LEIGH ROBINSON, 1333 F. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,117. Administration. 18-3t

C. Albert White and W. Mosby Williams, Solicitors
In the Supreme Court of the District of Columbia.
Charles W. Fairfax v. Unknown Heirs, etc., of James Small, Deceased, et al.
Equity No. 23,999.

C. Albert White and W. Mosby Williams having reported an offer from William J. Holtman of $800.00, all cash, for lots 17 and 18 in Small's subdivision in square 828 in the city of Washington, District of Columbia, on the conditions and said offer, subject to the payment to Moore & Hill, Inc., of 3% commission, as set forth in said report, it is, therefore, this 1st day of May, 1905, ordered that said offer be accepted and the sale of said lots ratified and confirmed on the **31st day of May, 1905**, unless cause to the contrary be shown before said last mentioned date. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-3t

Legal Notices.

Chas. W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William E. Tinney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of April, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of April, 1905. CHARLES W. BOYLE, 416 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,875. Administration. 18-3t

SIXTH INSERTION.

Daniel W. O'Donoghue, Solicitor
In the Supreme Court of the District of Columbia.
Mary C. Cronin v. Abraham Young et al.
No. 25,196. Eq.

The object of this suit is to establish of record a complete and perfect title, in fee simple, in complainant, by adverse possession, to part of lot numbered 1, in square numbered 983, in the city of Washington, in the District of Columbia, beginning for the same at the southeast corner of said square, being the intersection of the west line of 12th street with the north line of Maryland avenue northeast and running thence southwestwardly with said north line of said Maryland avenue the distance of 26 ft. and 1 inch to the line of land conveyed in liber N. C. T. No. 62, folio 444; thence north with said line the distance of 60 ft.; thence west the distance of 16 ft. 6¼ inches to the line of land conveyed in liber N. C. T. No. 62, folio 441; thence northwestwardly on said last mentioned line of said land the distance of 42 ft. 10⅝ inches to the north line of said lot numbered 1 at a point 58 ft. and 6 inches east of the northwest corner of said lot numbered 1; thence east on said north line of said lot numbered 1 the distance of 41 ft. and 6 inches to the said west line of 12th street; thence south with said west line of 12th street the distance of 90 ft. and 8 inches to the place of beginning. On motion of the complainant, it is, this 9th day of March, A. D. 1905, ordered that the defendants, **Abraham Young**; the unknown heirs, devisees, and alienees of **Abraham Young**; **Eleanor Young**, and the unknown heirs, devisees, and alienees of **Eleanor Young**, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the case will be proceeded with as in case of default. This order is to be published twice a month for three successive months in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.
mar. 10-17, apr. 7-14, may 12-19

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer, deceased**, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 21

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - MAY 26, 1905

CONTENTS.

Editorial 321
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Anna E. J. Cruit, appellant, v. Kate Dean Owen et al 323
Wm. F. Boogher, appellant, v. Thomas W. Roach et al 326
Warren B. Wilson, appellant, v. Leslie M. Shaw, Secretary, etc., et al 328
Legal Notices 330

Promotions in the Office of the Corporation Counsel.

Mr. A. Leftwich Sinclair, for some time past second assistant in the office of the corporation counsel of this District, has been appointed to the position of special assistant, provided for by Congress at its recent session, to have charge of the settlement of claims for damages against the District on account of changes of grade incident to the elimination of grade crossings. The appointment is a most desirable one, and in bestowing it upon Mr. Sinclair the Commissioners of the District have acted wisely. He is admirably equipped for its important duties. As second assistant corporation counsel, Mr. Sinclair had charge of all condemnation proceedings in behalf of the District, and his present appointment is a testimonial to the ability with which he discharged those duties.

It is understood that Mr. Francis H. Stephens, at present fourth assistant to the corporation counsel, will be promoted to the post of second assistant. Mr. Stephens is a lawyer of ability, and the promotion comes to him solely on the ground of merit. The vacancy caused by his promotion will be filled by the appointment of Mr. James Francis Smith, a member of the bar of this District, and who will prove a capable and efficient assistant.

THIS WEEK'S DECISIONS OF THE COURT OF APPEALS.

Obstructions in Streets; Delivery Wagon in Front of Business House.

In Probey v. District of Columbia, a conviction of the plaintiff in error in the Police Court for an alleged obstruction of the street by permitting a delivery wagon to stand in front of his place of business, was reversed. It is held, in an opinion by Mr. Justice Duell, that the owner or occupant of premises has the right to use the abutting street in a reasonable manner for the purposes of his business. Attention is called to the fact that the decision of the Court of Appeals in Gassenheimer v. District of Columbia, Wash. Law Rep. 197, had been announced ten days previous to the trial of the case in the Police Court; and that decision should have controlled the Police Court in its disposition of the case.

Partition—Construction of Will—Common Law Marriage.

In Travers v. Reinhardt, the suit was for partition, and the appeal was from a decree confirming the report of the auditor distributing the proceeds of sale. The principal questions involved were as to the construction of a will and whether there had been a valid common law marriage between a deceased devisee and one of the parties to the suit, who claimed to be his widow. The auditor held that the language of the will was plain, leaving no room for construction, and that the validity of the alleged marriage depended on the laws of New Jersey, where the alleged husband was domiciled at his death, and that according to the laws of that State the marriage was valid. The decree below is affirmed, in an opinion by Mr. Chief Justice Shepard.

Pure Food Law; Refusal of Dealer to Sell Sample of Milk.

In District of Columbia v. Garrison, it was sought to review a decision of the Police Court acquitting the defendant on a charge of refusing to sell a sample of milk to a health department inspector. The case involved a construction of section 6 of the act of Congress of February 17, 1898, relating to the adulteration of foods and drugs in this District. It appeared that the refusal was to sell a smaller quantity than that usually sold to a customer; and the Court of Appeals, in an opinion by Mr. Justice Morris, affirms the decision of the Police Court, holding that a dealer is not required to sell less than the amount usually sold to customers.

Digitized by Google

French Spoliation Claims; Attorneys' Fees Lobbying; Services.

In Waggaman, administrator, v. Earle, administrator, a decree of the court below confirming a report of the auditor was reversed, and the cause remanded for restatement of the account. The proceeding grew out of what are known as the French spoliation claims, and was a suit for an accounting brought by the administrator of the claimant against the estate of the attorney who had prosecuted the claim. The Court of Appeals holds that the allowance by the auditor of certain items was improper, for the reason that the services rendered were lobbying services. Mr. Justice Morris delivered the opinion of the Court.

Deed of Trust Note; Failure of Sale to Satisfy; Agreement to Release Residue.

In Ubhoff v. Brandenburg et al., trustees, the appeal was from a judgment upon a verdict directed for the plaintiff in an action to recover an alleged balance due on a note secured by deed of trust. It appeared that a sale of the property had failed to realize the amount of the debt. It was claimed by defendant that it had been agreed by one of the trustees—the other being absent from the District on account of illness—that if the property could be sold for an amount sufficient to pay the entire debt, the note would be surrendered; and that thereupon defendant procured a purchaser at a price sufficient for that purpose, to whom the property was conveyed. The Court of Appeals holds that this agreement was valid and binding on the plaintiffs, and therefore reverses the judgment and directs a new trial. The opinion is by Mr. Justice Morris.

Real Estate; Parol Agreement to Convey in Consideration of Services; Performance.

In Cherry v. Whalen the proceeding was to enforce a parol agreement whereby the owner of real estate promised to give the estate to complainant, either by deed or will, in consideration of her nursing and caring for his wife. The defendant denied that there was any such arrangement with complainant; but the court below found the agreement to have been made as alleged, and that there had been a performance thereof by complainant, and a decree was entered in her favor. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree.

Criminal Procedure; Taking of Evidence After Verdict Rendered.

In Raymond v. the United States the appeal was from a judgment entered upon a verdict finding the appellant guilty of criminal libel. The judgment was reversed on the ground that after verdict rendered and before sentence the prosecution was allowed to offer certain evidence which contradicted the testimony given by the defendant on the trial. The evidence was not offered for consideration by the jury, but to aid the court in determining the sentence to be imposed. The Court of Appeals, in an opinion by Mr. Justice Morris, holds that, although this was its purpose, its introduction amounted to a reopening of the case, and was an irregularity which entitled the defendant to a new trial.

Embezzlement; Commission Merchants.

In Green v. United States, the appellant was convicted under an indictment charging him with converting to his own use the proceeds of certain produce consigned to him as a commission merchant. It was contended by the appellant that he was a broker and not a commission merchant; but the trial court instructed the jury that if they found that certain correspondence offered in evidence constituted the transaction between the shipper of the produce and the defendant, then as matter of law the defendant was a commission merchant. The Court of Appeals affirms this ruling, in an opinion by Mr. Justice Duell.

Embezzlement by Letter Carrier of Contents of Decoy Letter.

In Byram v. United States, the appellant was charged with secreting and embezzling the contents of a letter. The letter in question was a decoy letter prepared expressly for the purpose of entrapping him, and it was contended by defendant that the letter was not such as came within the purview of the statute. The letter, though bearing the postmark of a postoffice in one of the States, was in fact not mailed there, but prepared in this city. The trial court held, however, that the statute was applicable, and the Court of Appeals affirms its judgment, in an opinion by Mr. Chief Justice Shepard.

Decisions in Patent Causes.

In Lattig v. Dean (No. 298), the appeal was dismissed. Opinion by Mr. Justice Duell.

In re application of Craveling (No. 263), decision of Commissioner of Patents affirmed. Opinion by Mr. Justice Duell.

Jones v. Cooke (No. 293), decision of Commissioner of Patents affirmed. Opinion by Mr. Chief Justice Shepard.

Digitized by Google

Court of Appeals of the District of Columbia.

ANN E. J. CRUIT, APPELLANT,
v.
KATE DEAN OWEN ET AL.

WILLS; INTENTION OF TESTATOR; CONSTRUCTION OF DEVISE IN TRUST.

1. The intent of the testator is the first and great rule in the interpretation of wills. The attending circumstances of the testator, such as the condition of his family and the amount and character of his property, may and ought to be taken into consideration, in order to ascertain such intent.
2. Testator gave his estate to a daughter in trust for his wife for life, and from and after her death in trust for his four daughters, share and share alike, for life, for their sole and separate benefit, and from and after their death in trust for the child or children of each of the daughters in fee simple, such child or children, respectively, to take the share to which his, her, or their parent was entitled. If any of the daughters should die without having been married, her share to pass to her surviving sister or sisters for life equally, and upon her or their death the same to vest in her or their child or children in the same manner, for the same estate, and pass on her or their death as her or their original shares. The widow and two of the daughters died, both the latter being unmarried. Subsequently another of the daughters died, leaving surviving her two children. In a suit by said two children to construe the will, held, that the plaintiffs were entitled to one-half the net income of the estate during the life of the defendant, the sole surviving daughter of the testator, who was entitled to the other one-half thereof during life, and that the equitable title in remainder in the real estate was vested in plaintiffs, subject to have said title opened to let in any after-born child or children of the defendant.

No. 1506. Decided May 2, 1905.

APPEAL by defendant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,948, in suit to construe a will. Affirmed.

Mr. E. H. Thomas for the appellant.

Mr. Chapin Brown and *Mr. J. P. Earnest* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal involves the correctness of the construction by the court below of the will of one Robert Cruit, who died November, 1861, leaving him surviving a wife, Catherine Cruit, and four daughters, Catherine E., then the wife of Samuel Owen, and three unmarried daughters, Susan, Ann, and Louisa. The will, executed September 1, 1858, was duly admitted to probate, and Susan, to whom the will was left in trust for certain purposes which will be hereafter stated, entered upon the administration of the estate and had charge of the same until her death, which occurred December 31, 1900. The widow died May 13, 1876; Louisa died January 2, 1876, and Catherine E. Owen died May 14, 1901. Susan and Louisa never married, nor has Ann up to the present time. Catherine E. Owen left her surviving three daughters, Evanina F. Mackall and these appellees, Kate D. Owen and Jesse Owen Gugle.

The will, in respect to which the controversy has arisen, is as follows:

"This is the last will and testament of me, Robert Cruit, of the city of Washington in the District of Columbia.

"First I give to my two nephews Edwin Cruit the son of George, and Henry the son of John L. Cruit, the legacy of one hundred dollars, to each of them, to be paid as soon after my death as may be. And all the rest residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever situated, I give devise and bequeath unto my dear daughter Susan Cruit her heirs executors and administrators upon the following trusts to wit In trust for my dear wife Catherine for and during her life, and to permit her to receive and take the whole income thereof after paying taxes repairs and insurance, and to apply and dispose of such net income as she my said wife may think proper and from and after her decease, in trust, as to my real estate for my dear daughters Catherine E. the wife of Samuel Owens, Ann Cruit, Louisa Cruit, and herself the said Susan Cruit, equally share and share alike, for and during their respective lives, for their own sole and separate benefit, free from the control of the husband of my said daughter Catherine and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not to be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge And from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her or their parent was entitled And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner, and for the same estate and pass on her or their death, as her or their original shares or share And as to my personal property, also given in trust as above expressed, I direct that the same shall, after the death of my said wife, be divided equally among all my said children, Catherine, Susan, Ann and Louisa share and share alike, and I accordingly give the same to them as aforesaid for their own sole and separate use

"And lastly I appoint my said daughter Susan Cruit sole executrix of this my last will and testament. And if my said daughter shall die or from any cause should become unable to act in the trust, I direct, that a trustee shall be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect

In testimony whereof I have hereunto set my hand and seal this first day of September in the year one thousand eight hundred and fifty eight. ROBERT CRUIT. [L. S.]"

The present value of the real estate is admitted to be over $100,000, and produces an income of some $11,000 or $12,000. The cause was heard upon the amended bill and the answers thereto of all of the defendants, and upon certain testimony which is of little or no value as an aid to the decision of the questions involved on the appeal. The court below decreed that under the terms of the will, the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, were, and are now, entitled to receive one-half of all of the net rents, revenues, and income arising from and out of the real estate devised by said last will and testament and mentioned in the bill of complaint, from, since and after the death of

Digitized by Google

their mother, Catherine E. Owen, to wit, from, since, and after the fourteenth (14th) day of May, nineteen hundred and one (1901), and being the same proportion of all of the said net rents, revenues, and income which their said mother, the said Catherine E. Owen, was entitled to receive at the time of her death; that the said defendant, Ann E. J. Cruit, was and is entitled to receive during her life, from, since, and after the said fourteenth (14th) day of May, nineteen hundred and one (1901), the other and remaining one-half of said net rents, revenues, and income arising from and out of said real estate, and that the equitable title in remainder of all of the real estate devised by said last will and testament is now vested in the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, as remaindermen, and their respective heirs; subject to have the said title opened to let in any after-born child or children, if any, of the defendant, Ann E. J. Cruit, and subject also to the right of the said Ann E. J. Cruit to receive during her life one-half of the net rents, revenues, and income derived from said real estate as hereinbefore decreed, under the provision of said last will and testament.

The decree also appointed trustees under the will in place of Susan Cruit, deceased, the trustee named therein, and enjoined the appellant from thereafter collecting and receiving the rents and income of and from the property. Ann E. J. Cruit appealed, assigning the following grounds of error:

1. The court below erred by its decree that under the provisions of the will of Robert Cruit the said Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall were and are from the death of Catherine E. Owen entitled to receive one-half of the net rents, revenues, and income arising from and out of the real estate, devised by said last will and testament, and in not decreeing that the appellant was entitled to the whole of said rents, revenues, and income.

2. The court below erred in not construing said will so that from and after the death of her sister, Catherine E. Owen, the appellant became entitled to receive no more than one-half of the said net rents, revenues, and income.

3. The court below erred in not holding that Ann E. J. Cruit had an estate in fee simple in said real estate to the extent, at least, of one undivided half thereof.

4. The court below erred in its decree by placing the share and estate of the appellant in said real estate in the hands of trustees, as in said decree provided, and in its injunction against the appellant as in said decree contained.

5. The court below erred in requiring the appellant in this cause to account for and pay one-half of the rents which she may have collected since the death of Catherine E. Owen, prior to the appointment of said trustees, to them or to any person, and in distributing said rents as provided in said decree.

The parties are in accord in stating that the intent of the testator is the first and great rule in the interpretation of wills. All courts have for years recognized this rule, and this court since its inception has followed it. Smith v. Bell, 6 Peters, 68; Adams v. Cowen, 177 U. S. 471; Earnshaw v. Daly, 1 App. D. C. 21: 21 Wash. Law Rep. 669; De Vaughn v. De Vaughn, 3 Apps. D. C. 53: 22 Wash. Law Rep. 224; Holcomb v. Wright, 5 Apps. D. C. 83: 23 Wash. Law Rep. 24. Particularly applicable to the case at bar is the statement of the Supreme Court in Blake v. Hawkins, 98 U. S. 315–324, quoted by counsel for the appellant, that—

"It is a common remark that, when interpreting a will, the attending circumstances of the testator, such as the condition of his family, and the amount and character of his property, may and ought to be taken into consideration. The interpreter may place himself in the position occupied by the testator when he made the will, and from that standpoint discover what was intended."

Let us, then, put ourselves as nearly as possible in the position of the testator at the time of the execution of the will and review the facts and surrounding circumstances, and little trouble will be found in fairly and correctly construing his will. In the fall of 1858 the testator was the owner of valuable real estate situated in the capital city of a rapidly growing country. His family consisted of his wife and four daughters, three of whom were unmarried, and the fourth then living with her second husband and being the mother of two female children. Naturally it was his desire to provide for his wife, his daughters, and such children as they had or might have. Such is the desire of every right-minded man bearing the relation to others of husband, father, and grandfather. There is no reason for inferring that any but the most loving relations existed between him and the various members of the family, for he refers to all whom he specifically names in the ordinary terms of endearment. His property consisted largely of real estate situated in a section of the city which required no more than ordinary foresight to see would naturally increase in value as the city grew, as the capital city of a great and growing nation necessarily must. The growth and consequent increase in value might be slow, but it was sure. Furthermore, all those living to whom he owed a natural duty were females. One was married, and for her husband it is easily spelled out that he did not wish him to have any control over the property. The other three daughters might marry and of their possible husbands he could know nothing. Such were "the condition of his family and the amount and character of his property." What would be the natural disposition of his property? What would any well-minded man do with real estate so situated, with a living wife and descendants, all of the female sex, three of his daughters unmarried and the daughters of the married daughter infants? Certainly he would desire to provide for his wife an ample support and leave her as the head of the family, to whom the children would look for their support, the grandchildren, such as there were or might be, in turn looking to their mothers for their support. Seeing the probable enhancement of value of the real estate and in order to prevent a dissipation of the property, and to make a provision for the support of all, with homes in the city and country, he would tie up the real property so that all of these objects might

Digitized by Google

be secured. He would, in carrying out these objects, provide that the husband of the married daughter, and the possible husbands of the unmarried ones, should have no control over or rights in any of his property. He would vest a life interest in the income of his property for his wife and daughters with a remainder over to any grandchildren, so that the real property might go intact to them, and not by wills made by any of his daughters pass into alien hands.

It is the contention of the appellees that such was the intention of their grandfather, and that the will clearly sets forth such intention. The court below substantially so found and it becomes our duty to determine whether, in our opinion, such contention and decision are correct.

In considering the questions involved, we must, as we said in De Vaughn v. De Vaughn, supra, "read the whole will together, and give to each term employed its full and natural meaning; and no words of the testator should be rejected or refused their sensible meaning in the place where employed, unless it be required to make sense for the context of the will."

Turning now to the will, it is plain, as is admitted by all the parties, that the real estate passed in trust to the daughter Susan, who was to pay the net income to the testator's widow Catherine, who had the undisputed right to dispose of it as she saw fit; that at her death, which occurred in May, 1876, the income was to be paid, share and share alike, to the surviving daughters. Louisa having died the previous January, unmarried and without children, the net income would be divided in three parts and this would continue until the death of another daughter. Such event occurred December 31, 1900, when Susan, also without children and unmarried, died. From that time on the net income would be divided in two parts, one going to Mrs. Catherine E. Owen and the other to the appellant. May 14, 1901, Catherine E. Owen died, leaving her surviving three daughters, who took their mother's share, which at that time was one-half of the net income. It seems to us that it could not have been the intent of the testator that, after the condition had arisen under which one daughter was clearly entitled to one-half of the net income, upon her death her surviving children should not take her entire interest. It was not the testator's intention, as we gather it from the will, that upon the happening of that event, one-half of the net income received by the deceased daughter should revert to her surviving sister and only the other half (or one-fourth of the entire net income) go to her surviving children. We think it requires a strained construction to be placed upon the words of the will to force any such conclusion. The clause, "And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner, and for the same estate, and pass on her or their death as her or their original shares or share," is unambiguous and can but mean one thing. That is, that when Louisa died, without issue, her interest passed to Susan, Ann, and Catherine; that when Susan died, without issue, her interest passed to Ann and Catherine; and that when Catherine died, leaving surviving children, her then interest, which was a one-half interest, passed to such children. To hold otherwise would defeat the intent of the testator as indicated by clear and apt words.

The plea of counsel for the appellant that the testator intended to give to the child or children of any married daughter the original share of such daughter had all the daughters survived the widow, and not the share that such married daughter was enjoying at the time of her death, is one that fails to impress us as being founded on anything but a technical nicety. The intent of the testator is to be gathered from a fair and reasonable interpretation of the language of the will. Thus, considering the terms employed, they mean that the entire interest of every nature that was vested in Catherine Owen at the time of her death passed to her daughters. It is only when an attempt is made to give a technical meaning to the word "their," as used in the phrase "their death," in the clause preceding the one we have quoted, that any difficulty of construction can arise. It is giving it a too technical meaning to construe it, when taken in connection with the following clause of the will, to mean that it refers to the death of all rather than to the death of each respectively. The testator was dealing with a known condition and not with a theory. He was employing ordinary words with their natural import, and not expecting that one word here and another there would be picked out and used to destroy his intention, as evidenced by taking the will as a whole. It is only when ultra refinement of expression is insisted upon that any ambiguity arises, and it naturally follows that when the construction of the will is approached from that standpoint that a half dozen interpretations can be placed upon it, as insisted by counsel for the appellant. We see no need, in construing this will, to wander afield and become lost in a maze. Nor does it seem necessary for us to cite authorities or distinguish between conflicting, or seemingly conflicting, decisions in order to arrive at a correct decision. Approached from a common-sense standpoint, the intent of the testator is clear and is as found by the court below.

Equally clear is it, in our opinion, that there is at the present time a trust estate, and that under the will it was the duty of the court below to appoint a trustee to take the place of Susan, the will expressly providing for such appointment when it directs, "And if my said daughter shall die, . . . I direct that a trustee shall be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect."

The assigned grounds of error are not well founded. It follows that the court below having made no error in its decree, it should be affirmed, with costs, and it is so ordered.

Affirmed.

Legal blanks for every State and Territory for sale at this office.

Digitized by Google

Court of Appeals of the District of Columbia.

WM. F. BOOGHER, APPELLANT,
v.
THOMAS W. ROACH ET AL.

No. 1494. Decided April 4, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 42,090, entered upon a verdict directed by the court in favor of the plaintiff. Affirmed.

Messrs. Mackall & Maedel for the appellant.

Mr. Walter C. Clephane and *Mr. W. Mosby Williams* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit at common law instituted in the Supreme Court of the District of Columbia by the appellant as plaintiff to recover compensation for "special services," alleged to have been rendered by the plaintiff to the defendants "as genealogist, examiner, and conveyancer, rendered in looking up, investigating, identifying, and locating the real estate belonging to the estate of Abraham Young, briefing the titles thereof, and in tracing, locating, and establishing the heirs of said Abraham Young, ascertaining their names, residences, degree of relationship, their respective interests, rights, etc., in and to said estate, and in the procuring of the necessary information to prepare the same, and in the preparation of deeds and contracts between the said heirs and the said trustees or defendants, or those preceding them, of great value to and made use of by said defendants; said services being rendered from, to wit, Nov. 1, 1888, to 1892,—$2,500"—as stated in the particulars of demand annexed to the plaintiff's declaration, which itself is in the common counts.

The same subject-matter of controversy was before us on a former occasion, in an equity suit instituted in the Supreme Court of the District by the appellant here as complainant against the appellees here and one other person, John L. Weaver, as defendant, to charge a certain trust fund for the payment of these same services. Boogher v. Roach, 12 D. C. App. 477: 26 Wash. Law. Rep. 297. There the bill of complaint was dismissed by the court below, and this court affirmed the decree of dismissal. In the opinion then rendered by this court it was said:

"While the acceptance of these services might have entitled him (Boogher) to an action of assumpsit against Roach, and even against Denver and Walter, we entirely agree with the learned justice who presided at the hearing that his claim therefor can not be made a charge against the trust estate or fund."

Acting upon what he assumed to be the intimation contained in this clause of the opinion, the appellant forthwith instituted the present suit at common law against Roach and Walter, General Denver having been dead for some time before. Roach and Walter severed in their pleadings; but their pleas, however, are substantially the same. They are the general issue, the statute of limitations, and former adjudication (in the equity suit mentioned), upon which the parties went to trial. At the trial it seems that the plaintiff alone offered testimony. That testimony, in the main, was substantially the same that was adduced in the equity suit, and which was set forth at some length in the opinion of this court in 12 D. C. App. 477. It need not, therefore, be here repeated. In addition to that, however, there was some additional testimony as to the value of the plaintiff's services, which certainly involved very great labor and research and must have been exceedingly useful to those who availed themselves of them.

The bill of exceptions taken in the case thereupon showed the following proceedings:

"The plaintiff to further maintain the issue joined upon his part offered to introduce in evidence before the jury the record in the chancery cause No. 21,842 in the name of Franklin H. Mackey et al. v. John H. Walter et al. to show that in the management of the estate the defendant Walter and those who are acting with him would receive 50 per cent of said estate and so much of the record as showed that the said John H. Walter as surviving trustee of Gen. J. W. Denver and John H. Walter trustees in the original deed of trust realized upon a large part of the real estate belonging to the heirs of said estates and had received various amounts which the complainant offered to prove by the record in said chancery cause and in other chancery causes relating to the subject-matter, and to which proffer the defendants objected on the ground that said testimony was irrelevant and immaterial and also upon the ground of the former adjudication pleaded in this case and the court refused to admit this testimony to be introduced before the jury and the plaintiff by his counsel excepted to this action of the court.

"Thereupon both the defendants moved the court to instruct the jury to find a verdict for the defendants upon the testimony introduced by the plaintiff upon the ground that the statute of limitations applied thereto and constitutes a bar to the plaintiff's right of action, which motion the court sustained and thereupon the plaintiff excepted to this action of the court and the jury thereupon rendered their verdict in favor of the defendant."

A motion for a new trial was made and overruled, and judgment was entered for the defendants; from which the plaintiff has appealed.

There are four assignments of error. One of them based upon the refusal of the court to grant a new trial need not be considered. The other three are, in effect—

(1) That it was error to refuse to permit the plaintiff to introduce in evidence the record of the chancery suit of Mackey and others v. Walter and others, for the purpose of showing that Walter and those acting with him would receive 50 per centum of the entire estate.

(2) That it was error to exclude from the evidence the records of other chancery suits which would show that Walter had realized upon a large part of the real estate and had received various amounts out of the same.

(3) That it was error to rule that the plaintiff's claim was barred by the statute of limitations.

Digitized by Google

We do not regard any of these assignments of error as well founded in law.

It is sought by the suit to enforce a joint liability, for the joinder of two or more defendants in a suit at common law, based upon contract, express or implied, can only be upheld upon the theory of joint liability. But there is no evidence whatever in the record before us of any joint liability on the part of the defendants. Between the appellant and the defendant Walter the record fails to disclose even the semblance of a contract. All that the record shows bearing upon Walter's liability is a part of the testimony of the plaintiff testifying as a witness on his own behalf, in which he says that in July or August of 1889, "at the request of Roach he turned all the papers over to General Denver, who turned them over to Walter, upon the promise that he was to be paid for his work;" and again that "he had never gotten any information from Walter, and indeed had never talked with him until after he had surrendered all the papers to General Denver, his cotrustee, and that he afterwards went to see Walter, and Walter said to witness that he ought to be paid when they had the money to pay with." This further statement from his testimony may also be cited:

"Witness also said that Walter had produced the papers prepared by witness in the equity cause of William F. Boogher v. J. L. Weaver, etc., and admitted that he got them from Roach; he also admitted that they had used them, and were still using them. The names in the recitals of the deed drawn by the attorneys for these trustees, Denver and Walter, are the same as shown by the work of witness."

How far the statement in this last cited portion of the plaintiff's testimony has any bearing on the present controversy we are not advised. We are not advised of the nature and purpose of the suit of Boogher vs. Weaver, etc., or what bearing that suit had on the present case. The natural inference from its title would be that it was a controversy merely between Boogher and Weaver as to their respective rights under the contract between them, and in no way involved the rights of any of the heirs of Abraham Young. If it did involve more than this it should have been set forth. This court can not ascertain from this record the contents of that suit. Apparently the papers referred to are papers prepared by the plaintiff for his own suit against Weaver, and it is not apparent why he should have compensation for them from Walter or from anyone else. If we were permitted to indulge in conjecture we might assume that this suit and the papers used therein, and to which reference is made, were part of the general scheme to recover property claimed by the heirs of Abraham Young, but we can not determine cases upon conjecture.

The other statements cited are no sufficient evidence on the part of Walter to pay the plaintiff for anything. The witness states that Walter said to him that he (witness) "ought to be paid when they had the money to pay with;" and we may well assume that this statement was true, and that the plaintiff should be paid. But it does not show that Walter promised to pay, or in any manner bound himself to pay, even if he used the material prepared by the plaintiff. There is no reason why he should not have used that material without liability on his part to any one, after it had been delivered to him, or to General Denver, by Thomas W. Roach, unless the use was under circumstances from which a promise from himself could have been implied. But there are no such circumstances.

It is true that the plaintiff also testified that "at the request of Roach he turned over all the papers to General Denver, who turned them over to Walter, upon the promise that he (plaintiff) was to be paid for his work." This promise evidently was the promise of Roach, and not the promise either of Denver or of Walter. Indeed it is very evident from all the testimony that there was no promise whatever, so far as this record discloses, from either Denver or Walter to pay the plaintiff for the material furnished by him. If the testimony implicates any one in such a promise, it is only the appellee, Thomas W. Roach.

But if we assume that Roach made such a promise, of which, perhaps, no doubt need be entertained, and if we assume, also, that the circumstances of the case will imply a promise by Walter to pay, yet the plaintiff's cause of action on either or both promises has long since been barred by the statute of limitations. The services, for which compensation is claimed, are stated to have been rendered from November 1, 1888, to 1892, and the plaintiff states that he turned over his papers to General Denver in May of 1890. The promise of Roach for payment and the alleged implied promise of Walter were both made at or about the same time. This suit was not instituted until April of 1898, nearly eight years afterwards. Plainly, therefore, the statute of limitations had intervened to bar the plaintiff's claim, however well founded it may have been in its origin. There is nothing whatever in the record from which a promise can be implied to keep the claim alive, or to make its payment contingent upon the realization of funds from the estate of Abraham Young. As we have seen, there was no promise whatever by Walter, but only an expression of opinion that the plaintiff ought to be paid whenever there was money wherewith to pay him, which can not reasonably be construed as a promise; and the promise of Roach was unconditional that the plaintiff should be paid for his work, which of course became barred in three years thereafter.

It is true that in the record there appears a contract in writing between Thomas W. Roach and others and John L. Weaver, in which the latter was to do the work for which, or for part of which, the appellant was afterwards employed, and was to receive a compensation of 10 per centum of the value of the property to be recovered, which was "to be paid in cash, or as may be otherwise agreed upon, upon the amounts as fast as obtained and disposed of at the value of the property when disposed of," and that afterwards, for an alleged consideration of $1,000, Boogher and Weaver contracted with each other that Boogher should do some of the work which Weaver had undertaken, and that he should receive therefor one-half of Weaver's fee. And this contract was ratified by Thomas W. Roach as

Digitized by Google

trustee for himself and the other heirs. But this contract, even if it were not infected with the vice of champerty, as we intimated in the opinion in the case of Boogher v. Roach, 12 D. C. App. 477: 26 Wash. Law Rep. 297, is not the contract upon which the plaintiff sues. That contract was abandoned by Weaver in 1889, and renounced by the plaintiff himself soon afterwards. The suit is upon a quantum meruit, or an implied contract, resulting from the acceptance and use of the plaintiff's work, with the understanding that it should be paid for by the defendants at its proper value, not at the percentage stipulated in the Weaver contract.

It is very clear, therefore, that the plaintiff has no good and sufficient ground of action against Walter, and that his claim against Roach is barred by the statute of limitations.

It is argued, however, on behalf of the appellant that while the ruling of the trial court may have been right, as we here hold it was, upon the application of the statute of limitations as the record stood with the testimony excluded which he sought to introduce, yet, as that testimony would show when the property had been diposed of, the value of such property, and when the sums realized therefrom by the trustee had been realized, its exclusion was error. This assumption of what the excluded testimony would show is not supported by anything that appears in the record. The evidence which was excluded was that of a certain chancery suit between Franklin H. Mackey and John H. Walter and others, No. 21,842 in the Supreme Court of the District, and other chancery causes relating to the subject-matter. Of course, it is unnecessary to expend argument upon the proposition that there was error in the exclusion of "other chancery causes relating to the subject-matter." Such a statement as to proposed testimony is too vague and indefinite to be considered by an appellate court.

With reference to the record of the chancery cause which is more specifically mentioned, that of Mackey v. Walter, the offer was to show by it that Walter and those who were acting with him would receive 50 per centum of the estate, and that Walter had received various amounts from the estate. Assuming that this record was otherwise admissible, yet the offer was of testimony that was wholly irrelevant. The crucial difficulty in the plaintiff's case as to Roach is the statute of limitations; and there was no offer here to show anything that would take the case out of the operation of the statute. Under the plaintiff's theory of the case that his claim became payable only when there was money realized from the Young estate which should be applied to its payment, yet there was no offer to show when such money was realized. It is now argued that the record, if admitted, would have shown the time when such sums were realized. But this is mere assumption; nor would it have been of any consequence when such sums were received, unless the time of receipt was within the period of limitations. The proffer at the trial should have been to show by the record that these sums had been received at a time which would have taken the case out of the operation of the statute.

But even this proffer would properly have been rejected, for it would have been as irrelevant as that which was actually made. It would have been based on the Weaver-Roach contract or the Weaver-Boogher-Roach contract of 1889, which is not in this case, and not upon the implied contract upon which the plaintiff has brought his suit. There is not a scintilla of evidence in connection with this latter contract that it was to be performed only upon the realization of funds by the Young estate. Such may have been the intention perhaps, for an implied contract on a quantum meruit may be made to depend upon a contingency as well as an express contract, but there is no proof here of any such agreement or understanding, and in the absence of such agreement or understanding, services rendered under an implied contract are entitled to compensation immediately upon their conclusion.

The case of Hughes v. Eschbach, 7 D. C. Rep. 66, cited on behalf of the appellant, is not antagonistic to the views here stated. In that case it was held by the Supreme Court of the District of Columbia in general term that under the common counts of a declaration a contract in writing under seal could be given in evidence. But that is a very different thing from importing into a suit on the common counts one part of a discarded, abandoned, and champertous contract under which no compensation is claimed.

We are of opinion that there was no error in the rulings of the trial court, and that the judgment appealed from should be affirmed, with costs. And it is so ordered.

Affirmed.

WARREN B. WILSON, APPELLANT,
v.
LESLIE M. SHAW, SECRETARY, ETC., ET AL.

INTER-OCEANIC CANAL; INJUNCTION TO RESTRAIN PAYMENT DENIED.

1. The lawful power of the United States to construct the proposed inter-oceanic canal across the Isthmus of Panama affirmed.
2. A decree dismissing a bill in equity to enjoin payment of the $50,000,000 authorized by the act of June 28, 1902, in connection with the construction of said canal, the bill alleging the unconstitutionality of the act, and that the treaty between the United States and Panama was null and void and conveyed no rights, affirmed.

No. 1582. Decided May 2, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in equity, No. 24,573, dismissing a bill for an injunction. Affirmed.

The appellant in propria persona.

Mr. Morgan H. Beach and *Mr. Charles W. Russell* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit in equity instituted in the Supreme Court of the District by the appellant as complainant, alleging himself to be a citizen of the United States and of the State of Illinois, and the owner of property therein subject to taxation by the United States, to enjoin the payment by the Secretary of the Treasury of the

Digitized by Google

$50,000,000 authorized by the act of Congress of June 28, 1902 (32 Stat. 481), to be paid to the New Panama Canal Company of France, and for the acquisition of a strip of land across the Isthmus of Panama, in connection with the construction of the proposed inter-oceanic canal across that isthmus. The injunction is sought on the ground that the act of Congress is unconstitutional, and that the treaty between the United States and the Republic of Panama purporting to convey to the United States the rights deemed necessary for the construction of the canal, is null and void and actually conveys no such rights.

The bill of complaint sets forth the terms of the statute and of the treaty, but no facts not of public notoriety; and a recital of its allegations is therefore unnecesary. A demurrer to it was interposed on behalf of the Secretary of the Treasury; but there was no appearance for the Republic of Panama or for the New Panama Canal Company of France, and no attempt to issue any process against either. The demurrer was sustained and the bill was dismissed; and from the decree of dismissal the complainant has appealed to this court.

Undoubtedly it is the purpose of the parties to this cause, as it is their right, to seek the ultimate decision of the Supreme Court of the United States; and the decision of this court will be regarded by them as no more than a step in the progress of the litigation. Consequently, notwithstanding the vast interests involved and the questions of great magnitude raised by the complainant and most aptly presented by him both in brief and oral argument, we deem it unnecessary to follow him in that argument or to enter into any elaborate consideration of those questions. We will content ourselves with a brief statement of the general principles which we think should determine our decision in the case.

We take it that, in general, the construction of a canal stands upon no different plane from that of a railroad, or a turnpike, or any ordinary public road, so far as it concerns the right of a State to construct any one or more of them. They are all equally public highways, although with different conditions and different limitations. They are all avenues of communication which it has always been held to be the peculiar province of the State to construct, although it has often found it more convenient to construct them by private corporations organized for the purpose than by its own direct effort. That any State of our union may, within its own borders, construct such a highway in either one of the modes indicated, we presume is not judicially open to inquiry.

Neither can there be judicial question at this day of the lawful authority of the United States to construct such a highway, either road or canal, within the territory over which they have exclusive jurisdiction, such as the District of Columbia and the so-called territories of the United States. The United States authorized the construction of the great trans-continent lines of railroad through its own territory; and the lawful authority was not wanting to do the work themselves had it been deemed expedient. Similarly, if it had been deemed expedient at any time to construct a canal between the Mississippi River and the Pacific Ocean, and thus to bind the States of the Atlantic with those of the Pacific Coast, we do not see how the lawful power could be denied to the United States to construct such a canal, either by the agency of an organized company or directly on its own account by its own employes, so far as the work lay within the territory over which it had exclusive jurisdiction. And such power need not be derived from the constitutional authority to regulate commerce between the States and with foreign nations, but would be the inherent right of a sovereign acting within its own domain, and authorized to levy taxes for the general good and the common welfare of all the States.

Now, when outside of our former domain and yet so situated as to be appropriate for the purpose, the United States have acquired yet other territory, and propose to construct through it a canal to connect the Pacific and the Atlantic States, and to facilitate the commerce of both with each other and with foreign nations, why should their lawful power so to do be deemed less than if they sought to construct a similar canal through New Mexico and Arizona to connect the waters of the Colorado with those of the Gulf of California? If we own the requisite land across the Isthmus of Panama, we fail to see wherein there would be any greater constitutional inhibition against the construction of a canal there than there would be against a similar construction in Arizona or Alaska. The question, of course, is not one of expediency, about which men may well differ, and which it would be for Congress, and not for the courts, to determine, but one of lawful constitutional authority; and we see no reason, even under the strictest construction of the Federal Constitution, to doubt the lawful authority of the United States to open up a way of intercommunication within its own territory.

As already stated, the construction of highways is the special function, and even the duty of the State; and that function can not reasonably be denied to the United States in the places in which it is sovereign and has exclusive jurisdiction. In its sovereignty, in its exclusive jurisdiction, in its ultimate ownership of the soil, in its authority to levy taxes in order to provide for the general welfare, rather than in the authority vested in the Federal Government to regulate commerce, do we find the lawful power of the United States to construct an inter-oceanic canal.

But it is argued that on the Isthmus of Panama we have acquired neither the sovereignty nor the ownership of the soil that would be proper for the construction of a ship canal across that strip of land. There is undoubtedly some question left by our treaty with the Republic of Panama as to our sovereignty over the so-called "Canal Zone;" and it may be that the ultimate ownership of the soil of that "Canal Zone" is not vested in the United States. But we have acquired a right of way, which for all practical purposes is the equivalent of ownership of the soil; and we have acquired such extent of control over the territory as to constitute the substance, if not the name, of sovereignty. The court has been invoked to intervene as a court of equity; and courts of

Digitized by Google

equity look at the substance rather than the form of things. Moreover, the executive and legislative departments of the Government, upon which the duty is devolved of negotiating treaties and enforcing them, have manifested their entire satisfaction with the treaty in question; and the courts should not be swift to find defects in it, since the purpose to be subserved is a public purpose almost exclusively within the cognizance of those two departments.

It follows in our opinion that the decree appealed from must be affirmed, with costs. And it is so ordered.

Affirmed.

A supreme court which has arrested a judgment of conviction in a criminal case because of a fatal defect in the indictment as presented to it, is held, in State v. Marsh (N. C.), 67 L. R. A. 179, to have the power, even after the close of the term, to grant the State an opportunity to correct the record so as to show that the alleged defect did not exist, and proceed to hear the appeal upon the corrected record. The amendment of a record to cure defect for which motion in arrest of judgment has been made is the subject of a note to this case.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Alexander H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John A. Murphy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **25th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. CATHERINE MURPHY, 350 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,940. Administration. 21-3t

---

Mason N. Richardson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Frances W. Gager**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 12th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of May, 1905. ELLA Y. BRAYLEY, by Mason N. Richardson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,239. Administration. 21-3t

Legal Notices.

Joseph A. Burkart, Solicitor

In the Supreme Court of the District of Columbia.

George M. Strachan et al. v. Thaddeus S. Strachan et al. Equity, No. 25,266.

The object of this suit is to have partition by sale of sublot No. 40, in square number 176, known as premises number 1914 New Hampshire avenue N. W., Washington, D. C. On motion of the complainants, it is, this 25th day of May, 1905, ordered that the defendants, **Thaddeus S. Strachan and Florence M. Strachan**, cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

---

Elbert S. Maloney, Solicitor

In the Supreme Court of the District of Columbia.

Emma V. Wharton v. Robert L. Wharton and Bertha M. Miller. Equity, No. 25,308.

The object of this suit is to obtain an absolute divorce from the defendant, Robert L. Wharton, on the ground of adultery. On the motion of the complainant, it is, this 17th day of May, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

---

S. Duncan Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of **Ysidora B. M. Dodge**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 29th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of May, 1905. HARRISON H. DODGE, 1219 32d st. N. W.; JOSEPH H. BRADLEY, 1219 32d st. N. W., by S. Duncan Bradley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,097. Administration. 21-3t

---

J. S. Barker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Elizabeth Bate, Deceased.

No. 12,907. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Zebina Moses**, of Washington, D. C., it is ordered, this 25th day of May, A. D. 1905, that notice be and hereby is given to **Maude Sorby and Clifton Sorby**, both of Craven, Assiniboia, N. W. T., Canada, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Leader, published at Regina, N. W. T., Canada, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Digitized by Google

Legal Notices.

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William Wallace Kirby**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. L. CABELL WILLIAMSON, 458 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,936. Admn. 21-3t

Thomas L. Jones, Solicitor

In the Supreme Court of the District of Columbia.
Walter Nervis v. Sarah Nervis.
No. 23,032. Equity Docket No. 52.

The object of this suit is to obtain a divorce from defendant on the ground of desertion and adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Bee. On motion of complainant, by his attorney, Thomas L. Jones, it is this 3d day of August, A. D. 1904, ordered that the defendant cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 21-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles A. Burgess**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. GRACE A. RYON, 828 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,925. Administration. 21-3t

John E. Laskey and Ralph Given, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration, c. t. a., on the estate of **Mary McKenney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **22d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. MARY J. COOPER, 701 32d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,198. Administration. 21-3t

John Ridout, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Benjamin F. Hall**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 23d day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of May, 1905. FRANK C. McCATHRAN, administrator, by John Ridout, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,225. Administration. 21-3t

Legal Notices.

J. A. Maedel, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Enders**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. JOHN ENDERS, 1533 Monadnock Blk., Chicago, Ill. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,920. Administration. 21-3t

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Helge G. Forsberg**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of May, 1905. GUSTAVE W. FORSBERG, 8th and Water sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,908. Administration. 21-3t

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.
Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 23 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 23 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry**, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; june 2-9; july 7-14; aug. 4-11

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George R. Chapman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. JOHN C. NORWOOD, 1632 Superior st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,699. Administration. 21-3t

Digitized by Google

Legal Notices

Hallam & Hallam, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Evalyn Doughty, Deceased.

No. 12,906. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters of administration, with will annexed, on said estate, by Cavour O. Bohrer, it is ordered, this 22d day of May, A. D. 1905, that notice be and hereby is given to **Mrs. Hannah Doughty**, and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

---

William H. Linkins, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Walter C. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1905. KATHERINE J. FALCONER, 1502 13th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,930. Administration. 21-3t

---

J. J. O'Connell, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Maguire**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. DENNIS C. SHEA, 101 I street N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,846. Administration. 21-3t

---

Charles T. Hendler, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Susan Turner, Deceased.

No. 12,723. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry J. McGowan, it is ordered this 23d day of May, A. D. 1905, that notice be and hereby is given to **Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Ebenhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills**, and the unknown heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Legal Notices.

SECOND INSERTION.

E. B. Hay, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Anna L. Norville, Deceased.

No. 12,981. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edwin B. Hay, it is ordered this 17th day of May, A. D. 1905, that notice be and hereby is given to the heirs of the deceased and to all others concerned, to appear in said court on the **22d day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

---

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who, with Elizabeth A. Goodman, now deceased, were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Helen M. Andrus**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 9th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of May, 1905. JOHN RIDOUT, Surviving Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,167. Administration. 20-3t

---

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Theresa Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1905. JUAN WOODRUFF LEWIS, Brookland, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,889. Administration. 20-3t

---

B. H. Louchs, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In the Matter of the Estate of Ephraim A. Greenough, Deceased. No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court that he has sold the two hundred and thirty-six lots situate in Falls Church, Virginia, as described and shown upon a plat and map of said tract filed with the report of such sale to M. E. Church for the sum of eight thousand and nine hundred dollars net, on the following terms: Two hundred and fifty dollars in cash, one thousand dollars within thirty days from the ratification of sale, and one thousand dollars per month thereafter until paid without interest until all is due. It is, therefore, this 15th day of May, 1905, ordered that sale be ratified and confirmed on the **15th day of June, 1905**, unless cause to the contrary is shown before said last mentioned date. Provided that this order be published once a week for three successive weeks before said date in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

Digitized by Google

Legal Notices.

Robinson White, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Flavius J. Fisher**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. ELIZABETH P. FISHER, 3423 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,917. Administration. 20-3t

Thomas Walker, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Dash**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. CREED W. CHILDS, by Thomas Walker, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,684. Administration. 20-3t

F. W. Matteson, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Laura G. Meehan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. MARGARET L. SKERRETT, 1708 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,909. Administration. 20-3t

B. F. Leighton and C. Clinton James, Attorneys

In the Supreme Court of the District of Columbia, Special Term for Probate Business.

In re the Estate of Loraine Lipphard, Deceased.

No. 12,129 Admn. Docket 32.

It appearing to the satisfaction of the court that the notification of the trial of the issues relating to the validity of the paper writing bearing date the 27th day of April, A. D. 1898, purporting to be the last will and testament of Loraine Lipphard, deceased, has been, as to the following persons, to wit, William A. Lipphard, Alice Anderson, Thomas A. Anderson, Edward J. Fyle, and John Lipphard, returned "not to be found," it is this 15th day of May, A. D. 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial on the **15th day of June, next**; and that a copy of this order, and of the issues heretofore framed, shall be published twice a week for four weeks in The Washington Post and once a week for four weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: James Tanner, Register of Wills.

ISSUES.

First. Was the said paper writing, dated April 27th, 1898, the last will and testament of the said Loraine Lipphard? Second. Was the said paper writing, dated April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, executed and attested in due form as required by law? Third. At the time of the execution by the said Loraine Lipphard, of said paper writing, dated April 27th, 1898, as her last will and testament, was the said Loraine Lipphard of sound and disposing mind, and capable of executing a valid deed or contract? Fourth. Was the said paper writing, bearing date April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, procured by the fraud or undue influence practiced upon her by any person or persons? Fifth. Was the signature of said Loraine Lipphard, to said paper writing, procured by force exercised upon her by any person or persons? 20-4t

Legal Notices.

Edward A. Newman, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia lettters testamentary on the estate of **Ellen E. Bartley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ABRAM S. McCOY, Pension Bureau, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,890. Administration. 20-3t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas J. McHugh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. PATRICK J. DRURY, 210 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,918. Administration. 20-3t

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.

Martha A. Mayse v. Brittania W. Kennon et al.

No. 25,289. Equity Docket No. 56.

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession to the west twenty-two feet and nine inches front by the full depth of lot four, in square eight hundred and eighty-two, in the city of Washington, District of Columbia. On motion of the complainant, it is this 16th day of May, 1905, ordered that **Virginia Cassell and Alexander Cassell**, and the unknown heirs, devisees, and alienees of the following persons, to wit, **Thomas Peter, John Brown, John I. Clark, —— Brown, and —— Ives** (late partners trading as Brown and Ives, formerly of Providence, Rhode Island), **George Gibbs and Walter Channing** (late partners trading as Gibbs and Channing), **Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter, next after the date of this order, good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 20-3t

William D. Hoover, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Frederick Rush**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 6th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,082. Administration. 20-3t

Digitized by Google

Legal Notices.

Eugene A. Jones, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick Curtin,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. HONORA CURTIN, 1823 N. Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,759. Administration. 20-3t

J. H. Lichliter, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Frederick C. Grose, Deceased.
No. 12,405. Administration.

On consideration of the report of Washington Topham, administrator herein, that he has received an offer at private sale from Ellen O'Dea, to purchase the equity of redemption of lot No. 23, in block No. 13, of Middaugh's subdivision, Bloomingdale, District of Columbia, as the same is more particularly described in said report and the proceedings in this cause, for the sum of $880 cash, of which the sum of $100 has been paid and the balance to be paid on final ratification of sale. It is, this 12th day of May, 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **12th day of June, 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

THIRD INSERTION.

Newton & Gillett, John B. Larner, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Sophia Sautter, Deceased.
No. 12,872. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named in said will, it is ordered this 12th day of May, A. D. 1905, that notice be and hereby is given to **Henrich Menges,** Darmstadt; **Johannis Menges,** Eltville am Rheim; **Elizabeth Loth,** Trohe bel Giessen; **Catherine Velton, nee Rohrbach,** Leihgestern bel Giessen, and **Christianna Weber, Maria Klug, Louis Dern,** and **Carl Dern,** all of Grossen Linden bel Giessen, all of said parties residing in Germany, and to all others concerned, to appear in said court on **16th day of June, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

H. W. Sohon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Ellen French,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. WILLIAM B. FRENCH, 506 E. Cap. st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,792. Administration. 19-3t

Legal Notices.

I. J. Costigan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Abbie B. Clark,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1905. ETHEL P. CLARK, Columbia Hospital. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,826. Administration. 19-3t

Fountain Peyton, Solicitor
In the Supreme Court of the District of Columbia.
The — day of February, 1905.
Polly Holmes v. James Holmes and Alice Walker.
24,917. Equity.

The object of the suit is to secure a divorce on the ground of adultery. On motion of Fountain Peyton, solicitor for the complainant herein, it is, this 2d day of March, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOMAS H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 19-3t

Stanton C. Peelle, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Ozias S. Miller,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. LURENA J. MILLER, 19 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,901. Administration. 19-3t

A. S. Worthington and Joseph D. Wright, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Kengla,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1905. EPHRAIM S. RANDALL, 8th St. Wharf S.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,245. Administration. 19-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Henry H. Wells,** deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 29th day of May, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 11th day of May, 1905. GEO. W. WHITE; AMERICAN SECURITY AND TRUST COMPANY, by James T. Hood, Secretary. By Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 9376. Administration. 19-3t

Digitized by Google

Legal Notices.

George E. Linkins, Solicitor

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

John B. Harry, Complainant, v. The Unknown Heirs, Alienees, or Devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott(nee O'Reilly), and Margaret Kuhns (nee O'Reilly), Defendants.

Equity No. 25,286. Docket .

The object of this suit is to establish in complainant a fee-simple title by adverse possession to the northerly twenty-five and thirty-five hundredths (25.35) feet front on River Road by the full depth of lot six (6) and all of lots seven (7) and eight (8) in block five (5) and all of lots one (1), two (2) and three (3) in block four (4) of John M. Barry's subdivision of parts of "Friendship" and "Mount Airy" in the District of Columbia, as per plat thereof recorded in county subdivision book 8, page 123, of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, it is this 9th day of May, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott (nee O'Reilly), and Margaret Kuhns (nee O'Reilly), both mediate and immediate, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order; otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return day, it appearing to the court upon good cause shown, based on the affidavit filed herein, that further publication is unnecessary. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

---

Lester & Price, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Agnes M. Beuchert, Deceased.

No. 12,867. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by John A. Ruppert and Lena Beuchert, it is ordered this 11th day of May, A. D. 1905, that notice be and hereby is given to Daisy Sauter, Eva Singleton, Joseph Wirth, and Antonia Rohrman, and to all others concerned, to appear in said court on Wednesday, the 14th day of June, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

---

Wilson & Barksdale, Solicitors

In the Supeme Court of the District of Columbia.

Cornelia C. Ashe et al., Complainants, v. Maria G. Bradley Dewey et al., Defendants. Equity, No. 25,244.

The object of this suit is to establish title to the following described real estate lying and being in the county of Washington, District of Columbia, and known and distinguished as a tract of land lying west of that part of the city of Washington formerly Georgetown, commonly called Fowler's Hill, containing 4.3988 acres, more fully described in the bill of complaint; also a tract of land lying south of the Washington and Great Falls Electric Railroad containing 1.1366 acres, more fully described in said bill of complaint. On motion of the complainants, by Wilson & Barksdale, their solicitors, it is, this 8th day of May, 1905, for good cause shown, ordered that John B. Livingston, or his unknown heirs, alienees, or devisees, and each of them, and all other persons interested, cause their appearance to be entered herein on or before the rule day of June, 1905; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for four weeks before said rule day in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

Legal Notices.

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Morris Keim, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of May, 1905. ALFRED H. KEIM, 812 Md. ave. N. E.; ABNER B. KELLY, Wash. Gas Light Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,910. Administration. 19-3t

---

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Finnella M. Alexander, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 2d day of June, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d Vice-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,163. Administration. 19-3t

---

Edwin C. Dutton, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mariner A. Pierson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of April, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1905. JOHN L. MARTIN, 509 4th st. S. E., Wash., D. C.; F. F. NINDE, Colonial Beach, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,852. Admn. 19-3t

---

E. F. Colladay, Solicitor

In the Supreme Court of the District of Columbia.

Mary Ann Shekell, Alice E. Masterson, Jane I. Elmore, Ellen I. Masterson, Katharine C. Masterson, Anna L. Masterson, and Charles B. Masterson, Complainants, v. Theresa Masterson, a minor, and Joseph I. Masterson, Defendants. No. 25,319. Equity Docket No. 56.

The object of this suit is to have the complainant Alice E. Masterson declared to hold in trust for the benefit of all the parties to this suit, the title to lot thirty-one (31) in Starr and Metcalf's subdivision of square numbered three hundred and two (302) in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 112, of the records in the office of the surveyor of the District of Columbia; to have the wills of Jane Everard and Hugh Masterson, deceased, construed; and to have sale made of said lot and the proceeds thereof distributed to the parties to this suit in accordance with the terms of the said wills. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish this order in any other paper. On motion of the complainants, it is this 5th day of May, A. D. 1905, ordered that the defendant, Joseph I. Masterson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-3t

Digitized by Google

Legal Notices.

Charles J. Murphy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Annie Partridge**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1905. CHARLES J. MURPHY, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,767. Administration. 19-3t

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James S. Davis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of January, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. KATE IRLAND DAVIS, 1333 Roanoke st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,616. Administration. 19-3t

Chester Howe, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Henry M. Gitt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1905. DAVID L. GITT, 628 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,895. Administration. 19-3t

Julius I. Peyser, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Sidney Emil Rosenthal**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1905. JAMES ERNEST ROSENTHAL, 932 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,892. Administration. 19-3t

Hallam & Hallam, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of George Fouse, Deceased.
No. 12,861. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased and for letters testamentary on said estate, by Patty C. H. Fouse, it is this 9th day of May, A. D. 1905, ordered that notice be and is hereby given to **Nerva Fouse and Phoebus Fouse, and to Charles H. Fouse**, if alive, or if not to any issue of his, and to all others concerned, to appear in said court on **Monday, the 12th day of June, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 19-3t

Legal Notices.

FOURTH INSERTION.

John Selden, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court for the said District.
In re Estate of Margaret Edes, Deceased.
No. 12,883.

Upon consideration of the petition heretofore herein filed by Thomas Hyde, J. Hubley Ashton, and Henry H. Flather, praying that a certain paper writing, bearing date the 15th day of March, 1905, and purporting to be the last will and testament of Margaret Edes, late of the city of Washington, in the District of Columbia, spinster, deceased, and which is now on file in the office of the register of wills of the said District, may be admitted to probate and record, both as to realty and as to personalty, as and for the last will and testament of the said Margaret Edes, deceased, and that letters testamentary thereunder may be granted unto the said petitioners, and it appearing to the court that, of the persons who, but for the execution of the said paper writing, would, or might, be entitled to, or interested in, the estate, or in some part of the estate, of the said decedent, as her heirs at law, or next of kin, the following, to wit, Sarah Smull, Ellen Smull, Elizabeth F. Focke, Margaret Ellen Meredith, Alice Jane Justins, Zaidee Harriman, Ethel Smull, Barston Smull, George W. Smull, Herbert Smull, and Dorothy Smull, are non-residents of the District of Columbia, and have been returned not to be found by the marshal thereof, it is now, this 1st day of May, 1905, on motion of Mr. Selden, solicitor for the petitioners, by the court, ordered that **Friday, the 30th day of June, 1905**, be, and the same is hereby, appointed for the appearance before the court, holding a Probate Court, of each of the above-named non-residents, to show cause why the said prayers of the said petition should not be granted. Provided a copy of this order be published once in each of three successive weeks in The Washington Post, a newspaper of general circulation in the said District, and also in The Washington Law Reporter, the last in time of such publications to be made not less than thirty days in advance of June 30, 1905; and provided, also, that a copy of this order, as published, be mailed to each of the said non-residents at his or her last known postoffice address. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 18-4t

SEVENTH INSERTION.

Saml. Maddox, Solicitor
In the Supreme Court of the District of Columbia.
William H. Davis, Complainant, v. the Unknown Heirs, Alienees, and Devisees of Robert Jennifer, Deceased, Defendants. In Equity, No. 25,246.

The object of this suit is to quiet the title of the complainant to lot "E" and the north three (3) feet of lot "D" by the full depth of said lot in Robert Jennifer's subdivision of part of original lot four (4) in square three hundred and thirteen (313), in the city of Washington, District of Columbia, as per plat recorded in liber R. W., folio 111, of the records in the office of the surveyor of the District of Columbia. Upon motion of the complainant by his solicitor, it is this 11th day of April, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of **Robert Jennifer**, deceased, cause their appearance to be made herein on the first rule day, occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. It is further ordered that this order be published in The Washington Law Reporter three (3) times during the current month of April and in each issue of the said Reporter during the month of May, 1905, the court being satisfied upon good cause shown by the bill and affidavit filed in this cause that it is not necessary that this order shall be published at least twice a month during the period of not less than three (3) months, or that the same shall be published in any other paper, no other paper being selected by the parties. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 15-7t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 22

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JUNE 2, 1905

CONTENTS.

Editorial 337
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Ida L. Rockwell, appellant, v. the Capital Traction Co. 338
The District of Columbia, plaintiff in error, v. Bushrod T. Garrison 345
Legal Notices 347

Foreign Judgments—Right of Assignee to Sue in His Own Name Denied.

What is stated to be a decision of considerable importance, and the first construction by our local courts of Chapter XI of the Code of Law for this District, dealing with the assignment of choses in action, was made by Mr. Justice Barnard, holding Circuit Court No. 1, on May 26, 1905. The case was that of Thomas H. B. Dawson v. Mary J. Wright, executrix of the estate of Daniel Pratt Wright, deceased, at Law, No. 47,648. The plaintiff brought suit on thirteen separate judgments, aggregating about $3,200, recovered in Morgan County, West Virginia, and assigned to him by the respective plaintiffs therein. On behalf of the defendant a demurrer was filed to the declaration, on the ground that section 431 of the Code, authorizing the assignment in writing of judgments, etc., and giving the assignee the right to sue thereon in his own name, was applicable only to domestic judgments; and that the expression, "open accounts, debts, and demands," in section 433 of the Code, considered in connection with section 431, precluded the contention of the plaintiff's attorneys that the word "debts" was meant to cover an action on a foreign judgment. The court sustained the demurrer, and rendered judgment for the defendant for costs. Messrs. Millan & Smith represented the plaintiff, and Mr. E. A. Newman and Mr. W. Mosby Williams the defendant.

The Right of Privacy.

The doctrine announced by the majority of the Court of Appeals of New York, in Roberson v. Rochester Folding Box Company, 64 N. E. 442, denying the existence of what is referred to in that case as the "so-called right of privacy," is expressly repudiated by the Supreme Court of Georgia in the recent case of Pavesich v. New England Life Insurance Company, 50 S. E. 68. The opinion admits that there is an entire lack of precedent on the question, but it is said that the absence for a long period of time of a precedent for an asserted right is not conclusive evidence that the right does not exist. It is argued that the right of privacy is derived from national law and recognized by municipal law, and is embraced within the absolute rights of personal security and personal liberty. Liberty of speech and of the press are recognized as limitations upon the exercise of the right of privacy, but are held not to preclude the existence of that right. The right of privacy may be waived either expressly or by implication, but a waiver for one purpose or in favor of one person does not authorize an invasion for all purposes or by all persons with reference to the specific facts, it is held that the publication of one's photograph without his consent, as a part of an advertisement, is a violation of the right of privacy, entitling the person whose picture is reproduced to recover without proof of special damage.

Suretyship—Change of Contract.

In Singer Manufacturing Co. v. Boyette, decided in April, 1905, by the Supreme Court of Arkansas (86 S. W. 673), it appeared that a contract between a principal and his selling agent required the latter to make weekly reports of collections, etc. The agent gave a bond, with sureties, for the performance of the contract. Subsequently the agent was relieved by the principal from making reports except when she had made sales or collections, and only monthly reports were required. It was held that this action of the principal released the sureties from liability on the bond.

THE announcement is made that there will be no further jury trials in either of the circuit courts during the present term, except possibly on Monday, June 5. In the criminal courts jury trials will continue during the month of June, in order to dispose of cases in which the defendants are in jail.

Digitized by Google

Court of Appeals of the District of Columbia.

IDA I. ROCKWELL, APPELLANT, v. THE CAPITAL TRACTION COMPANY.

PRACTICE; BILL OF EXCEPTIONS; PERSONAL INJURIES; RELEASE; FRAUD IN PROCUREMENT OF; RETURN OF CONSIDERATION; EVIDENCE; DIRECTING VERDICT; CHAMPERTY AND MAINTENANCE.

1. In order to warrant an appellate court in determining whether there was error in giving or refusing an instruction to return a verdict the bill of exceptions must show that all the evidence has been set forth.
2. The bill of exceptions in the present case held substantially to comply with this requirement.
3. Where a release executed by husband and wife of a claim for personal injuries to the wife recites that it is "given under our hands and seals," and a seal is affixed to the signature of the husband, who first signed the release, but not to that of the wife, the presumption will be indulged that the seal affixed to his signature was adopted by her also.
4. The plaintiff in an action at law for personal injuries may defeat the operation of a release under seal pleaded in bar of her action by showing fraud in its procurement.
5. In order to avoid a release on the ground of fraud, the plaintiff must return or offer to return the consideration received therefor; but it is time enough to make the tender of the return of such consideration when the release shall have been pleaded in bar of the action.
6. The evidence on behalf of the plaintiff in support of the charge of fraud in obtaining her signature to the release, tending to show that at the time she was suffering considerable pain, and was weak, nervous, and weeping under the strain, and that she was induced to sign by the statement of her husband, who had previously signed the release, made in the presence of the agent of defendant without contradiction or explanation by him, to the effect that its execution by the husband made it operative to destroy any right of action she might have had, held sufficient to require submission of the issue to the jury; and the direction of a verdict for defendand held error.
7. The fact that plaintiff used the money received as a consideration for the release shortly after its receipt, *held* not a ratification of the release as matter of law, where at the time she used it she remained under the impression had when she signed the release.
8. A champertous agreement made by the plaintiff in an action for personal injuries with some third person for the maintenance of the action is no bar to a recovery; and, therefore, evidence tending to show that plaintiff had not furnished the deposit for costs, or the money tendered to repay that received as a consideration for a release, is inadmissible.

No. 1433. Decided March 7, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at law, No. 43,951, entered upon a verdict of the jury in an action for personal injuries. Reversed.

Messrs. Eugene Carusi & Sons and *Mr. Charles H. Merrillat* for the appellant.

Mr. R. Ross Perry for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action to recover damages for personal injuries sustained by Ida I. Rockwell while a passenger on the cars of defendant, November 15, 1898. The declaration was filed May 23, 1900. In addition to the general issue defendant pleaded a release executed by plaintiff and her husband under seal of November 23, 1898, wherein, for the sum of $85 paid them, they released and discharged the said cause of action. Replication filed February 26, 1901, denied under oath that the release was plaintiff's deed. On January 13, 1903, a mistrial was had, and the entry thereof recites that "plaintiff made a tender of the sum of money received by her from the defendant at the execution of the 'satisfaction' herein pleaded, with interest, which was refused." Thereafter the aforesaid replication was, by leave of the court, withdrawn and another substituted therefor. This alleged that the release had been obtained through misrepresentations made, and fraud practiced by defendant's agent; and, further, that plaintiff's husband had been induced to execute the same through fraudulent misrepresentations, and that plaintiff had likewise been induced to execute the same while sick and in a nervous condition, and through misrepresentations made to her as to the effect of her husband's discharge, she being ignorant of her rights, etc. The defendant thereafter withdrew its plea of the general issue. Issue was then joined upon defendant's pleas of release and accord and satisfaction, and upon the plaintiff's replication.

Plaintiff introduced evidence tending to show that on November 15, 1898, the car of defendant stopped to take on passengers; that, after she had taken hold of the handle bar and was attempting to enter the car, it was negligently started, and she was dragged and her arm badly strained; that she returned to her home and suffered great pain; that she was confined to her bed and house for some time, and had her arm bandaged by a surgeon; that she has continued to suffer great pain to the present time, and has been unable to labor, etc. Two surgeons testified to the injuries of the plaintiff, saying that her arm had been bandaged and placed in a plaster cast for about six months. They further said that an indentation in the hand was probably due to neuritis; that the injuries were severe and painful; and that plaintiff would probably recover in a year or two. Defendant introduced no evidence relating to the accident, but offered as witnesses two surgeons whose evidence tended to show that they had examined the plaintiff's arm in January, 1903, and found nothing to indicate that there was any neuritis at that time or effects thereof. Plaintiff also proved the former tender of $85 with interest, and renewed the same, including costs, which was again refused.

The case was made to turn upon the evidence relating to the execution of the release pleaded by the defendant. The release bears date November 23, 1898, and is a printed form designated for execution by one person. The blanks and certain interlineations made necessary by the double execution were written in by defendant's agent. In consideration of $85 it releases to the defendant all actions or causes of actions which "we or either of us now have against it by reason of an accident which occurred on the 15th of November, 1898, at Tenth street and Pennsylvania avenue N. W., Washington, D. C., resulting in injuries to my wife's arm," etc.

It concludes: "Given under our hands and seals this 23d day of November, 1898." It is executed first by W. G. Rockwell on a line at the end of which is printed the word "seal." Underneath occurs the signature of plaintiff thus: Mrs. Ida Rockwell [her X mark], and under the printed word "witness" is the signature, "Mrs. Irene Lucas."

Digitized by Google

It was undisputed that plaintiff's name was written by Irene Lucas, her sister, who also signed as the witness. The words "her mark" were written by defendant's agent. There is no seal of any description opposite the signature of plaintiff. Many pages of the record are filled with the examination and cross-examination of the witnesses introduced on the matter of the release, and the substance of the same will be given.

Plaintiff testified that she was in bed suffering pain when defendant's agent called about a week after the accident. He said that he represented the defendant and inquired of the accident, number of the car, etc. He also inquired as to her husband, his occupation, and place of business. Very little else was said. He returned next day about 2 o'clock. Plaintiff was in bed suffering pain; was in a nervous condition and had been taking medicine to relieve pain. Her sister, Mrs. Irene Lucas, and Mrs. Ready were in the room. He said the company wanted to do right; told him she did not know how badly she was hurt, and if not badly injured would only want her expenses. He repeatedly asked her to fix a price and she as often declined to do so. He asked if $50 would do and she made no answer, but turned her back. Mrs. Ready told him that plaintiff was in no condition to talk, was in no immediate need, and he would better come again when she was not so sick. He went away and returned about a half hour later with her husband. He came to the bed and said, "I have your husband's signature; will you give me yours?" She said, "No." He had not shown a paper before. He said, "I have your husband's signature; will you sign it?" She said: "No, sir; I will not." Her husband "ripped out that, 'You sent that man around there to me and made me make a —— —— fool of me—worse than that —, and now I have signed the paper, and your rights are gone, and if he goes away you won't get a penny with my signature on it.' My husband then ran down the steps, and slammed the door, and left me alone with the lawyer—with Mrs. Ready and them in the room, but he went out and left me. So I was awfully excited and nervous, and I raised up and said, 'Oh! I don't care what you do,' and I raised up as if I would sign, but whether I ever touched the pen—I don't remember even seeing the pen, and I know that I don't know one word on the paper. I have never seen it except as he came towards the bed with it to me." After what her husband had said the agent said nothing, but asked her to sign the paper. She said, "I don't care what you all do; I don't care what you do." She turned her back. Does not remember touching the pen or anything but raising up and then lying down. Had her face turned to the wall and was crying. Had not told the agent to see her husband and did not know that he was going to see him. She was not permitted to answer what her belief was then as to her rights after her husband had signed. That she gave no one authority to put her mark to the paper. She did not know if the agent offered money. She did not accept any. Had her back turned, was crying and paid no attention. He left a check and some money on the bureau. It lay there until next evening and some one put it in the cupboard. Was angry and vowed she would never touch the money, and that she had never touched the pen. Cashed the check about four weeks after because of her expenses. "I thought that my rights had gone, that I could do no different, and I might as well use it. When I used the check I thought that I could do no different, that my rights were gone, and it was no good to keep it." The money—five dollars and some cents—was first used. That it was months after that she learned that the action of her husband had not ended her rights. She went to see a lawyer about seven months afterwards. Upon cross-examination the following letter was shown her:

"WASHINGTON, D. C., November 17, 1898.

"PRESIDENT DUNLOP.

"DEAR SIR: On last Tuesday, November 15, as entering one of the cars, No. 217, of the Capital Traction road, at Tenth street and Pennsylvania avenue, about 4 p. m., with friends, I was thrown backwards, receiving severe injuries, from which I am still suffering. The cause of same was that the car was started before I was fully aboard. Having heard nothing from your company in regard to same, I will be pleased to do so.

"Yours respectfully,

"MRS. ROCKWELL,

"Per T. A. ROBERTSON.

"No. 1117 Twenty-second street northwest, Washington, D. C."

Said she had never seen the letter but had suggested it and knew that it had been written. Miss Robertson was a neighbor who had called in—she was her cousin. Did not intend the letter as an invitation to come to see her, but wanted the defendant to know whether they would send or not. Thought she had to let them know about it. Expected she wanted someone to come to see her, and suppose the agent came because of it. Thought she could not bring a suit without letting them know. Wanted to tell him of the accident. Did not want payment of money at the time. My cousin said I would better let them know. The following question was asked her: "Did you not know, when you got that check three weeks afterwards, that it was given you on the faith of that being your signature to that paper, whatever the effect of it was, and whether it was valid or not; that that check was given to you on the faith of that being your signature to that paper?" She answered: "I knew that he had said that he had a mark on there and that we had the money and there was no good doing anything after that." Did not remember that Mrs. Lucas asked permission to sign her name to the paper.

W. G. Rockwell, husband of plaintiff, testified that a man came to Walter's store where he was employed. Said he represented the railroad company, and had been to the house to see plaintiff, and wanted to do what was right for her. That she had left it all to witness and he had come to see him. Was busy and had some talk about the price. Asked him $100 or something and we got it down to $85. Signed the paper and he asked me to go to the house with him. When we got there it appeared that plaintiff knew nothing about it. She would not sign. Thought she had sent him to me to fix it up. "I said something about a 'nice way

Digitized by Google

to send a man around to me and make a —— ass of me; I have signed the paper, now if you don't put your name on it you won't get anything,' and I went out." Left defendant's agent there. Mrs. Irene Lucas was called as a witness and corroborated the plaintiff's evidence relating to the first visit of defendant's agent. Regarding the second and third interviews, she said:

"I was over there doing work for my sister, and Mr. Dunlop came in, and he told her he had come to see what he could do for her, and Mrs. Rockwell said she didn't want him to do anything for her; that she didn't know how badly she was hurt. He says: 'Well,' he said, 'you know, Mrs. Rockwell, we have so many of these little cases that we want to get them off our hands as soon as possible;' and he says: 'Don't you think that $50 will be a fair price?' She says: 'Why, Mr. Dunlop, I don't care for anything,' she says, 'I don't want anything unless I am hurt badly, and if I am, why, of course, I will expect you to pay what is right.' And she says: 'As far as now is concerned, I am in no condition to talk to you.' And he stayed there for quite awhile, and kept on until she got real nervous, and Mrs. Ready advised him to go away and come back some other time; but he kept on raising the price until he got up as high as $85, I think. I am not positive whether it was that, or it might have been less; it was not more, and Mrs. Rockwell kept on refusing to take it, and I was getting dinner; and I went out of the room off and on, and I don't remember anything then, only that he went out and said he would come back.

"When he came back Mr. Rockwell came with him; and Mr. Rockwell came in behind Mr. Dunlop, I am sure, and kind of stood in the doorway, and Mr. Dunlop at the foot of the bed. And Mr. Dunlop says: 'Mrs. Rockwell,' he says, 'I have your husband's signature to this paper,' he says, 'Will you sign it?' She says, 'No, I will not;' and Mr. Rockwell became angry, and he said this what they have said before; I won't repeat that; and he ran down the steps and shut the door. And Mr. Dunlop, he stayed there, and he told her that he thought she had better sign it; that Mr. Rockwell had signed it, and she ought to, and she said: 'Oh,' she said, 'I don't care what you all do,' and she threw herself back in the bed and commenced to cry. And Mr. Dunlop stood there for a minute, and so he said, 'Aren't you going to sign, Mrs. Rockwell?' and she says: 'No,' she says, 'I am not going to sign;' and I went out of the room to attend to the dinner, and when I came back Mr. Dunlop said: 'Mrs. Lucas,' 'he says, 'I want your name as a witness; I want you to sign as a witness,' and I am not positive, but I think, he says, 'sign your sister's name, too,' and I signed the paper. Now, whether I signed her name or mine I don't remember, but I know that I signed my own name."

She further said that plaintiff was lying with her face to the wall crying. "She did not say one word to me at all, and I took it for granted that it was all right, and that the time I had been in the kitchen they had come to some agreement." He offered some money to Mrs. Ready who refused to take it. He offered it to witness, and then laid it on the bureau and went out. Mrs. Ready, in refusing to receive the money, said she did not think it was right; that she thought an undue advantage had been taken of the plaintiff, and she would not have anything to do with it. Plaintiff was in a great deal of pain and had taken something to quiet her nerves, which Dr. Moran had prescribed. She identified her signature as a witness and said that she wrote plaintiff's name. The agent handed witness the paper, and said he wanted her signature as a witness. Signed where he said. Told her to write plaintiff's name. Did not tell plaintiff; supposed that she knew. She did not see because her face was to the wall. Did not ask her about it. Did not see her touch the pen.

Mrs. M. J. Ready testified as follows:

"I was not present on both occasions when Mr. Dunlop called. I was not there the first time; I was the second. When Mr. Dunlop came in he just simply said he had come to make some agreement about the accident, and Mrs. Rockwell said that she did not feel like talking about it that day, you know, that she was in no condition to talk. He just simply said that he had come to make some agreement, don't you know, and do the best that he could, and asked her what amount she thought would be right to take, and she said she did not know. So he said—he asked her if she thought $50 would be right, and she said no, that she would not take fifty dollars; that if she was not badly hurt, she did not want any more than expenses; but if she was, why she thought that they ought to do what was right by her.

"Then he went on to say sixty, I think, or he went as far as, I think, eighty dollars. Then she just simply turned over and said that she did not care to talk about it and I told him that I thought he should leave and call another day, as I did not think she was in any condition to talk on the subject, and as she was not in any immediate want, that it was not necessary to have a settlement. And he said that he had so many of these cases that he would prefer settling it right then and there, so as to clear it right up.

"So, anyway, he talked just on that subject, for a while, and finally he said that he would go away and that he would call again. So in a few moments he returned with Mr. Rockwell, and he asked Mrs. Rockwell to sign a paper, and she said no, she would not; and Mr. Rockwell then uttered an oath, you know, and said that she had sent that man around there, and if the paper went away with his signature on it, without hers, she would not get anything.

"So Mr. Dunlop walked to the bed and asked her if she would sign, and as he did I turned towards the window, and I did not see whether she did or not. I never noticed any further than that. Then, in a little while, Mrs. Lucas came into the room, and I heard Mr. Dunlop ask her if he might have her signature to her sister's cross, or something—at first he came to me and asked if he might have mine. I told him that I did not care to have anything to do with the case at all, and then, when Mrs. Lucas came in the room, why she gave her signature, as Mr. Dunlop asked her to. Then he wrote a check, I think, at least he came over to me and offered me the check, and I told him,

Digitized by Google

as I had told him before, that I did not care to have anything to do with it, and so he laid the check on the dresser, and he went out.

"I do not remember anything at all being said by Mrs. Rockwell to Mr. Dunlop or by Mr. Dunlop to Mrs. Rockwell about Mr. Dunlop's going to see her husband. Mrs. Rockwell seemed to be suffering a great deal, and she was just tossing from one side of the bed to the other, and did not seem to be in any condition to be annoyed, as I had told Mr. Dunlop at the time. He said he had so many of these cases to settle that he would like to have this cleared up as soon as possible. As nearly as I can recollect, Mr. Dunlop was there about half an hour, probably a little more. I don't know."

As the motion to withdraw the case from the jury was founded on the insufficiency of the plaintiff's evidence relating to the execution of the release, it is unnecessary to set out the evidence on behalf of the defendant on this point. It is sufficient to say that it consisted of the testimony of the agent who effected the settlement and received the release; and that it contradicted the evidence offered by the plaintiff tending to show undue advantage taken of her condition.

He said that he paid his first visit because of plaintiff's letter and heard her statement as to the manner in which she had been hurt, the time, place, and number of the car. That he said the defendant wanted to do what was right, etc. That upon the second visit he found plaintiff in good condition to talk and agreed with her on $75. That she referred him to her husband and gave his place of business. That he called to see the husband who wanted more, but finally agreed with him on $85. That he then interlined and filled in the blanks of the printed form with pen and ink furnished by the husband, who then signed the same. That he asked the husband to go with him to see his wife execute the release; wanted him to explain to her the change from $75 to $85, and to know that everything was properly done. That when they returned, plaintiff demurred and said she ought to have more money. That he reminded her of her agreement, and she said she did not know how long she might be laid up, and ought to have more. Her husband was in a hurry and impatient and said, without using an oath: "Why I thought you had agreed on this amount. I haven't got time to fool around here. I have got to go back. I can't stay around here. I have signed this paper and agreed on this, and you will either take that or nothing. I haven't got time to fool." He then went out; that he asked plaintiff what she would do. She made no reply; that he said: "We will have to do one thing or the other. We will have to do something now. I can not stay any longer." She said: "Well, I guess I will have to take it." That he then said if agreeable she could sign the paper, and he asked for pen and ink. She asked Mrs. Lucas to get them, and the latter went into another room and brought them. Nothing was said during this interval. The release was read to her slowly and accurately. She raised up to sign, but could not use her hand and said: "Let my sister sign it for me." Mrs. Lucas wrote plaintiff's name, witness wrote the words her mark, and plaintiff touched the pen and made the mark. Mrs. Lucas signed as a witness. Mrs. Ready was not in the room at the time. That he took the release, laid $5.75 in cash on the bureau, which she said do, and a check for $79 25. The check was payable to the agent's order and indorsed by him. It showed that it had been paid December 3, 1898.

Defendant introduced a witness whose evidence tended to show declarations made by the plaintiff afterwards that she had compromised for $85, but that she now wanted more money, etc. This witness and another undertook to impeach plaintiff's reputation for veracity. Plaintiff introduced evidence in rebuttal tending to show enmity on the part of defendant's impeaching witnesses, and to contradict their statements; also to show that her reputation for truth was good. At the conclusion of the evidence, as shown by the bill of exceptions, the defendant "moved the court, on all the evidence as above set forth and given for the plaintiff, to instruct the jury to return a verdict for defendant." The motion was sustained, and from the judgment rendered on the verdict so returned the plaintiff appealed.

1. A preliminary question arises on the objection of the defendant to the consideration of the error assigned on the action of the court in directing the verdict, on the ground that the bill of exceptions does not purport to set out all of the evidence. It is well established that in order to warrant an appellate court in determining whether there was error in giving or refusing an instruction to return a verdict the bill of exceptions must show that all of the evidence has been set forth. U. S. v. Copper Queen Mining Co., 185 U. S. 495, 497. In our opinion the bill of exceptions in this case substantially complies with that requirement. It purports to recite the evidence in the order of its introduction, giving the name of each witness. This evidence is given at length in each instance, and frequently recites both the questions and answers—a practice which, in this last respect, has been disapproved. D. C. v. Frazer, 21 App. D. C. 154, 159: 31 Wash. Law Rep. 83. As shown in the statement of the case, the recital of the action of the court in directing the verdict is that it was founded "on all of the evidence as above set forth on behalf of the plaintiff." There is a later recital in the bill of exceptions as follows: "Be it further remembered that each of the several and separate exceptions taken by the counsel for the plaintiff, to the rulings of the court during the progress of the trial, and the exceptions by the counsel for the plaintiff to the instructions of the court to the jury upon the whole evidence, the subject of which whole evidence is included in the bill of exceptions." . . .

Moreover, the bill of exceptions presented by the plaintiff was objected to by the defendant, and the one signed was presented by the latter, as shown in the following note given by the trial justice and made a part of the same:

"Note.—Counsel for plaintiff submitted a briefer bill of exceptions, but counsel for defendant objected to said bill of exceptions as not setting forth the whole record and submitted another bill of exceptions, which said other bill of exceptions plaintiff admitted was an accurate

Digitized by Google

record of the proceedings, but protested that the same was set forth at unnecessary length and was objectionable under the rules of the Court of Appeals as embodying to too great an extent a literal transcript of the proceedings at the trial, whereupon, in view of the admission of counsel for plaintiff of the accuracy of this bill of exception, and deeming it proper the record should be set forth with fullness, I settled and signed the above bill of exceptions."

We do not regard this note as making the bill of exceptions that of the defendant, thereby precluding it from objecting to its sufficiency, and it has been recited merely as tending to strengthen the conclusion that none of the evidence material to the determination of the error assigned has been omitted.

The second recital of the bill of exceptions, before quoted, was an unnecessary one, but whether so or not, in view of the fact recited in the note aforesaid, and the first recital that the instruction was given "on all the evidence as above set forth and given," it can not be regarded as controlling the first one.

2. Several questions are involved in the determination of the error assigned on the action of the court in directing the return of the verdict for the defendant, and these will be considered in their order.

(1.) Is the release of the cause of action to be regarded as executed by the plaintiff under seal? It will be remembered that the plaintiff's husband first signed the instrument and that a seal is affixed to his signature; that none follows the signature of the plaintiff. Were this all it might well be considered a sealed instrument in so far as the husband is concerned, without being one as regards the wife. But the instrument contains the recital, "given under our hands and seals," from which the presumption may be indulged that the seal affixed to his signature was adopted by her also. Northumberland v. Cobleigh, 59 N. H. 250, 252; Burnett v. McCluey, 78 Mo. 676, 688; 25 A. & E. Encyc. L. 79. See also, Brown v. Commercial Fire Ins. Co., 21 App. D. C. 325, 336.

(2.) Can the plaintiff defeat the operation of the sealed release pleaded in bar of her action at law by showing fraud in its procurement? We are of the opinion that she can. At a time, even, when the observance of the technical distinctions between sealed and unsealed instruments was more rigidly adhered to than now, it was permissible to avoid the obligation of a sealed instrument by showing that fraud or imposition had been practiced in procuring the signature and seal. "The fraud in this aspect goes to the question whether or not the instrument ever had any legal existence." Hartshorn v. Day, 19 How. 211, 223.

While it may be that the present case does not fall entirely within the exception stated in Hartshorn v. Day, supra, because there was no actual misrepresentation of the character and purport of the instrument executed, we see no reason whatever for the maintenance of the distinction in the case of instruments of the kind under consideration.

The operation of the release was as completely effective at law without as with execution under seal, and the affixture of the seal was a superfluous act. The decided tendency of modern decisions is to minimize the old distinctions between sealed and unsealed instruments, where they have not been entirely abrogated by legislation. Lyons v. Allen, 11 App. D. C. 543, 549. In that case it was said by Chief Justice Alvey: "Formerly this right of avoiding a release under seal, on the ground of fraud, in an action at law, was generally denied, and the party was referred to a court of equity in jurisdictions where the remedies at common law and equity are separate; but it is now held by a great preponderance of authority that a release so set up as a defense may be avoided at law."

(3.) Was it necessary to entitle the plaintiff to avoid the release on the ground of fraud, that she should have offered to return the consideration received, before bringing her action for the injury? We have heretofore held that a return or an offer to return must be made in order to avoid such a release. Lyons v. Allen, 11 App. D. C. 543, 549, 552. But in that case no offer to return was made either before or after the beginning of the action, and the amount received on the execution of the release was permitted to be set off in the verdict.

In another case it was held that the tender of the return of the consideration, made during the trial of the case, was sufficient. C. & O. R. R. Co. v. Howard, 14 App. D. C. 262, 297; s. c. 178; U. S. 153, 167. In that case, as in this, the release was obtained from a woman suffering great pain from a recent injury, and the plaintiff's evidence tended to show that she did not understand the instrument to be a release of her cause of action, but a mere receipt for money given to help her. It is sought to distinguish that case from this, because here there was no misrepresentation of the nature of the instrument, and the alleged fraud consists solely in the manner in which its execution was obtained. As intimated in that case, though not considered necessary to its determination, we are not satisfied with the soundness of any such distinction as affecting the time of the offer to return the consideration.

If, in case of a contract procured in either way, the signer should bring an action of deceit or a suit to cancel, she would be compelled to return, or offer to return, whatever she had received as the condition of its maintenance. In the one case the signer might not reasonably be expected to tender the return of money and bring a suit to rescind, because of the belief that she had received the money as a gift and had executed nothing more than a receipt for the same, at least, until informed that the instrument was in fact a release and held as such. If informed of this fact, in advance, what would be the substantial difference between her situation and that of the plaintiff in this case? Each instrument is operative to the same extent if untainted by fraud, and equally inoperative if so tainted. If procured through fraud, neither party is required to sue for cancellation, but may impeach its validity when offered in defense to an action at law. And we see no good reason why one party more than the other should be required to anticipate a defense founded on the instrument, and offer to return the consideration as the condition of bringing the action. We are of the opinion

Digitized by Google

that it is time enough to make the tender in either case after the release shall have been pleaded in bar. Tender or offer to return then accomplishes all the purposes for which it is required at all.

Some of the cases to which our attention has been called, where the doctrine has been declared that tender or offer to return is a condition precedent to the institution of the suit, were either suits to rescind, or suits in courts of blended jurisdiction where cancellation was part of the remedy sought. Lumley v. Wabash R. Co., 71 Fed. Rep. 21; Strodder v. South Granite Co., 94 Ga. 626; Herman v. Hoffernager, 54 Cal. 161. In others no tender had been made at any stage of the proceedings. Norwich Union Fire Ins. Co. v. Guiton, 124 Ind. 217; Potter v. Monmouth Ins. Co., 63 Me. 440; Pangborn v. Cont. Ins. Co., 67 Mich. 683; E. T. V. & G. Ry. Co. v. Hayes, 83 Ga. 558; Drohan v. L. S. & M. S. Ry. Co., 162 Mass. 435; Brown v. Hartford Ins. Co. 117 Mass. 479; L. & N. R. Co. v. McElroy, 100 Ky. 153, 159; Hill v. N. Pac. R. Co., 113 Fed. Rep. 914, 916; Och. v. M. K. & T. Ry. Co., 130 Mo. 27. In the case last cited there was a replication of fraud in the release pleaded by defendant, but no offer to return the consideration. The majority of the court expressed the opinion that in the action at law unless the execution of the release was obtained by fraud a tender should have been made. It was further said, however, that the "petition might have been amended, before or at the trial, upon proper terms by adding a count in equity to set aside the settlement." Gould v. Cayuga Co. Bank, 86 N. Y. 75, was a case very unlike the present one, and the tender therein made during the trial was a qualified and conditional one. Substantially it was nothing more than an offer of credit upon the recovery sought.

On the other hand, many cases, some of which are cited, expressly decide that the offer to return may be made after the institution of the suit and while it is depending. O'Brien v. Chicago, etc., R. Co., 89 Iowa, 644; C. R. I. & P. R. Co. v. Lewis, 109 Ill. 120; C. R. I. & P. R. Co. v. Doyle, 18 Kan. 58; see, also, U. P. R. Co. v. Harris, 158 U. S. 326, 331, 333. In that case the release pleaded by the defendant was attacked for fraud in its execution. A meager statement of the evidence tends to show that there was a claim of misrepresentation of the contents of the instrument, and also that the plaintiff was not in a condition to fully understand what he was doing. The defendant moved the court to instruct the jury that the release was a complete bar to the action. This was denied and the question of fraud was submitted to the jury. No tender of return of the consideration was made at any time, but the jury were permitted to deduct it from the amount allowed plaintiff for his damages. The question of tender was not expressly, but impliedly, passed on in approving the charge to the jury.

(4) It is unnecessary to review the evidence offered by the plaintiff in support of the charge of fraud in obtaining her signature to the release, all of which appears in the statement of the case heretofore made. In our opinion it was sufficient to require the submission of the issue to the jury. Whether the witnesses were credible, and whether their evidence had been overcome by the contradictory evidence of the defendant, were questions for the exclusive determination of the jury.

The evidence, regarded in the aspect most favorable to the plaintiff, tended to show that at the time of touching the pen she was in bed suffering considerable pain, and that she was weak, nervous, and weeping under the strain. If, however, the validity of the release turned solely upon her incapacity to understand what it was represented to be, namely, a release of her right of action, this evidence, standing alone, would not be sufficient; but it was entitled to weight in determining whether she signed the release under the false impression that its execution by her husband made it operative to destroy any right of action she may have had. If in her weakened and nervous condition she was induced to sign under that belief, produced by the declaration of her husband in the presence of defendant's agent, who neither contradicted nor explained it, her action can not be governed by the general rule that applies in the case of a mistake of law, and it is unnecessary to consider the distinction between ignorance of a general rule of law and ignorance of law relating to a mere private right of property. A misrepresentation of the law, especially under such circumstances, does not differ in effect from the misrepresentation of a material fact.

(5) The fact that plaintiff used the money and cashed the check shortly after their receipt did not show a ratification of the release as matter of law. If when this was done plaintiff remained under the same impression that she had when she signed, or authorized her signature to be attached to, the release, then there was no ratification. "One can not waive or acquiesce in a wrong while ignorant that it has been committed." Pence v. Langdon, 99 U. S. 578, 581.

3. One other question remains to be considered, as it may arise on the new trial if not now determined. A champertous contract that may have been made by plaintiff with some third person for the maintenance of the action is no bar to her recovery. Burnes v. Scott, 117 U. S. 582, 589. Evidence, therefore, tending to show that the plaintiff had not furnished the deposit for costs, or the money tendered to defendant to repay that received at the time of the execution of the release, was irrelevant, and ought not to have been admitted over her objection.

For the errors pointed out the judgment must be reversed, with costs, and the cause remanded with direction to vacate the verdict and grant a new trial. It is so ordered. Reversed.

Bankruptcy — Composition — Ratification.— Under Bankr. Act. it is competent for a trustee in bankruptcy to maintain an action in a State court against a chattel mortgagee to recover the value of property taken by defendant under his mortgage from the possession of the bankrupt after the adjudication, and the judgment therein on the merits is binding on him as to the issues involved. A composition offered by a bankrupt held not such as would be enforced as against a dissenting creditor. In re Woodend, U. S. D. C., S. D. N. Y., 133 Fed. Rep. 593.

Digitized by Google

Court of Appeals of the District of Columbia.

JAMES N. SPARKS, APPELLANT,

v.

FANNIE P. SPARKS.

ALIMONY, PENDENTE LITE; COSTS OF DEFENDING APPEAL.

An order of the court below granting to the plaintiff in a suit for maintenance alimony pendente lite and counsel fees, and also an order requiring the defendant to pay the plaintiff a sum to enable her to defend an appeal taken by him from the former order, affirmed.

No. 1508. Decided April 4, 1905.

APPEAL by defendant from orders of the Supreme Court of the District of Columbia, in Equity, No. 24,904, allowing alimony pendente lite and expenses of suit in proceeding for maintenance. Affirmed.

Mr. E. H. Thomas and *Mr. John Ridout* for the appellant.

Mr. A. E. L. Leckie, Mr. Creed M. Fulton, and *Mr. Joseph W. Cox* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

Two appeals are before us at this time. The one is from an interlocutory order granting to the plaintiff-appellee alimony pendente lite and also counsel fees. The other is from a like order requiring the defendant-appellant to pay to appellee a certain sum to enable her to defend an appeal taken from the former order.

The suit is brought by the wife against the husband to compel him to contribute to her support and maintenance, the petition alleging desertion and a refusal to provide for her. To the petition the defendant filed a plea setting up the dismissal of a former suit brought for a divorce by the petitioner as a bar to the present proceeding. Copies of the bill of complaint and the decree in the former suit are attached to the plea herein and made exhibits.

The order for alimony and counsel fees was made after hearing counsel for the respective parties and upon the pleadings and additional affidavits.

Had the plea been set down for argument or testimony taken in support thereof, and the case brought before us as an appeal from a final decree, counsel could have not been more diligent in the investigation of the questions of law raised by the plea, and in the citation of law applicable thereto, nor could they have been more eloquent, witty, and pathetic in the presentation of the alleged facts set forth in the pleadings and the somewhat lurid exhibits and affidavits. Were it allowable for us to express an opinion on the subject, we could truly say that the clients at least got the worth of their money, whatever might be said of the mutual friends. But the case comes before us upon simple interlocutory questions, involving no great constitutional principles, nor requiring us to very closely examine the decisions of the courts of last resort in all the States of the Union. The court was interested, instructed, and charmed, yet withal grieved, at the pictures painted of domestic infelicity, the heartlessness of man, and the forgiving spirit shown by woman. We must, however, keep in the beaten paths and resist the temptation to pass upon the allegations of "cold acts of indifference," the position to be assigned to "the perfect gentleman about the family," or to locate the roof under which the forgiving ones were to be sheltered. The merits of the case are not now to be passed upon, much less the questions raised by the plea, which is only before us as one of the pleadings read upon the motion, and *as* a pleading.

We have intimated that the counsel fee is reasonable and have set forth some of the salient features of the case in justification of our opinion. We also find that alimony at the rate of $25 a month is a reasonable amount to be paid by the defendant, who is in receipt of a salary from a solvent employer of $1,400 per year. The rule is well settled that a court is not guilty of a gross abuse of discretion in awarding alimony and counsel fee to a wife, without passing upon the merits of the case, where she is without separate means and the husband is able to support her. Facts sufficient to justify the court below in awarding alimony and counsel fees were not seriously controverted. The marriage was not denied; the wife was as stated "without any visible or other means of support;" the husband was in receipt of a fair salary; and the parties were admittedly living apart. The court, on the hearing of such a motion, was not required to pass upon the question whether the plea was well founded in law. That was a question to be passed upon in another way. The order granting alimony at the rate of $25 a month and counsel fee of $50 was in all respects proper. It appears that after the appeal was taken and citation issued, and upon the same day the appeal bond was filed, the second order granting plaintiff the sum of $75 as counsel fees and expenses of defending the appeal was passed.

We are of opinion that the court below at the time of granting the order had jurisdiction over the case, and that it was still pending there, and was not at that time in this court. If the appellant desired the luxury of an appeal, and preferred to take it rather than speed the hearing of the case on the merits, he should not feel aggrieved if the court allowed the wife the protection of counsel. While litigation is a luxury, and ordinarily a husband need not furnish luxuries, which may, perhaps, be beyond the ideas of a prudent man, yet this must be held to be one of the exceptions to the rule.

No error was committed by the court below and the orders appealed from are affirmed, with costs.

In Grueber Engineering Company v. Waldren, decided in March, 1905, by the Supreme Court of Errors and Appeals of New Jersey (60 Atl. 386), the following is from the official syllabus: "Where the final letter in a correspondence leading up to the contract shows that it was intended to embrace the whole agreement, and to finally conclude it, it is the only evidence of the contract; and oral testimony of what was said or done during the negotiations, or other letters written pending the negotiations, will not be permitted either to contradict the written contract or to supply terms with respect to which the writing is silent."

Digitized by Google

Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,
v.
BUSHROD T. GARRISON.

No. 1535. Decided May 23, 1905.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the plaintiff in error.

Mr. Charles F. Diggs for the defendant in error.

Mr. Justice MORRIS delivered the opinion of the Court:

The appellee was arraigned in the Police Court of the District for refusing to furnish to an inspector of the health department a sample of milk, in which article he was a dealer, sufficient for the purpose of analysis, in alleged violation of the act of Congress of February 17, 1898, 30 Stat. 246, enacted for the prevention of adulteration of drugs or articles of food. The section of the act, which is the portion charged to have been violated, is in the following words:

"Sec. 6. That every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this act shall furnish to an analyst or other officer or agent of the health department, who shall apply to him for the purpose and shall render him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession."

The facts of the case are sufficiently shown by the bill of exceptions taken at the trial in the Police Court, which, as it is most commendably short, may here be transcribed in full. It is as follows:

"Be it remembered that, at the trial of this cause, the District of Columbia to maintain the issue on its part joined, called as a witness one R. A. Guerrant, an inspector of the health department of the District of Columbia, who, after being duly sworn, testified in substance as follows:

"That on the 23d day of February, A. D. 1905, he called at the defendant's store, and stated to him that he, the said Guerrant, was an inspector of the health department of the District of Columbia, and demanded of the said defendant a half pint of milk for the purpose of making an analysis of the said milk, the said defendant being then and there a dealer in milk, and then and there tendered to said defendant the value in money of the half pint of milk, and that thereupon the defendant refused to sell him a half pint of milk, informing him that he did not sell milk in any quantity less than one pint, and then and there he placed a pint bottle of milk on the counter and offered to sell it to him; that he did not see any bottled in vessels containing less than one pint, and that all the bottles containing milk were sealed by a pulp paper cap.

"Thereupon the District of Columbia closed its case, and the defendant, to maintain the issue on his part joined, testified on his own behalf, after having been duly sworn, substantially as follows:

"That he was, on said 23d day of February, A. D. 1905, engaged in the grocery business in the District of Columbia, and that he sold milk, but that for over a year he had not sold it except in the original bottle as received from the dairy, and that they consisted of pints and quarts, and were sealed by a pulp paper cap; that for the past year he had never sold less than a full bottle, and that if he had been forced to sell the inspector a half bottle he would have lost the other half, as he did not use milk personally and would not have offered it for sale, as his customers understood he did not sell milk in quantities less than one pint.

"This was all the evidence in the case, and thereupon counsel for the defendant moved the court to find defendant not guilty and rule as a matter of law that the act of Congress, for a violation of which the defendant was charged in the information is unconstitutional and void, because it is an attempt to deprive the citizen of his property without due process of law, and that Congress did not mean that said act should be so understood.

"And the court so ruled and found the defendant not guilty, to which said ruling and judgment counsel for the District of Columbia then and there duly excepted, etc., etc., etc."

Thereupon the District of Columbia sought and was allowed a writ of error to remove the cause to this court, and the cause is now here upon such writ.

The fact does not appear in the record, but it does appear in the briefs and oral arguments of counsel in the cause, and it is conceded that the value of a pint of milk is 4 cents, and the value of a half pint is 2 cents. The amount tendered by the inspector in this case was 2 cents for the sample of a half pint which he desired, and the appellee tendered him a pint for 4 cents. So it appears that this whole controversy is over the sum of 2 cents; and the time of this court has been wasted, and the money of the United States and the people of the District of Columbia to the extent, at least, of five hundred times the amount involved has been needlessly expended over a matter which the slightest amount of common sense should have dictated as improper to be made a subject of litigation. Nor is there any question whatever of principle involved in the case. If there were, the ridiculously small amount of money involved might be overlooked. But there is no such question. And we must say that, if this court had fully understood the scope of appellant's application for a writ of error, the writ would not have been allowed.

It is true that it is said that this is a test case, and that the question of the constitutionality of the statute has been suggested. But there is no good ground for making any test case here; and only in the frivolous and absurd procedure of the District officials is there any basis for the theory of unconstitutionality of the section of the statute here in question. The statute is sensible and proper enough; and it is an enactment sanctioned by the experience of many, perhaps most of the States of the Union, and fully justified by the police power vested in the

Digitized by Google

State to provide for the public welfare. Nor was it contested by the appellee that the State is entitled to demand reasonable samples of drugs and articles of food for the purpose of analysis upon payment of their value. On the contrary, he tendered to the inspector a reasonable sample, and it was refused. The difference in bulk and value between a pint and a half pint of milk, required for the purpose of analysis, is too insignificant as a matter upon which to base a penal prosecution. A reasonable sample is what is required by the act of Congress. Under the circumstances of this case, a pint was a reasonable sample, and a half pint was not such a reasonable sample. The appellee was fully within his right and fully performed his duty in tendering the former; the inspector was wholly at fault in demanding the latter and insisting upon it against the will of the appellee.

What may or may not be a reasonable sample is a question for which perhaps no positive rule can be laid down applicable to all cases. This is not for the determination exclusively either of the inspector or the dealer. The act requires that it shall be "sufficient for the purpose of analysis," but it is not competent for the inspector to require, because he thinks a half pint of milk sufficient to enable him to make a satisfactory analysis of such milk that therefore the dealer must sell him such half pint, when thereby the value of another half pint would be destroyed or lost to the dealer, and the dealer is willing to sell an entire pint at an additional cost of merely 2 cents to the inspector.

The Police Court was entirely right in the judgment which it rendered in this case, and it would have been error to render any different judgment. Its decision must be affirmed. And it is so ordered.

Affirmed.

Street Railroads—Child on Track—Degree of Care.—A child non sui juris held only required to exercise such care as could be reasonably expected of a child of its age and intelligence.—Indianapolis St. Ry. Co. v. Schomberg, Ind., 72 N. E. Rep. 1041.

Street Railroads — Frightening Horses. — Where a motorman observed that a team of horses became frightened it was his duty to stop the car if he could have done so in the exercise of due care. Christy v. Des Moines City Ry. Co., Iowa, 102 N. W. Rep. 194.

Evidence—Fall of Elevator.—In an action for the death of a servant from the fall of an elevator held error to exclude evidence as to the mode in which the elevator safety device operated. Starer v. Stern, 91 N. Y. Supp. 821.

Evidence—Handwriting—Expert Testimony. —It is within the discretion of the trial court to allow bank officers to testify as experts as to handwriting. Savage v. Bowen, Va., 49 S. E. Rep. 663.

Corporation; Agency; Usage; Evidence.

The Supreme Court of Indiana held, in the recent case of Berlin v. P. L. Cusachs, Limited, that the authority of the subordinate agents of a corporation often depends upon the course of dealing which the company or its directors have sanctioned, and may be established sometimes without reference to the official record of the proceedings of the board, by proof of the usages which the company has permitted to grow up in the business, and of the acquiescence of the board charged with the duty of supervising and controlling the company's business, and that parties dealing with the president of a corporation in the usual manner and within the scope of the powers which the president has been accustomed, without the assent of the directors and ultra vires of the corporation, to exercise would be entitled to assume that he had been invested with those powers. The court further held that to warrant the discharge of the manager of a corporation, whose services had been employed for a fixed time and at a fixed price, before the expiration of the time agreed upon, there should exist grounds of complaint against him of a "serious" character, and that should a discharge be made without the existence of such serious grounds the corporation would render itself liable to the discharged employee as provided in article 2749 of the Civil Code of the State.

Lease—Rental—Remodeling Building.

The Kentucky Court of Appeals held, in the recent case of Jones et al. v. J. W. Fowler Drug Company, that where premises were leased for a drug store for five years under a contract providing that in the event the owner should desire to remodel the building so far as it would necessitate the tenant removing from the building he was to receive a certain reduction of the rent, with the right to occupy the premises after the building was remodeled at the same rental until the expiration of the lease, such tenant was entitled to hold the premises, where they had been damaged by fire without his fault, when the damage was not such as to render them untenable, and that such lessee might elect to retain them unless the lessor agreed that he should reoccupy them after they were remodeled, as specified in the written contract.

Evidence — Privileged Communications.—Strong and violent language, disproportionate to an occasion otherwise privileged, may raise an inference of malice in the use of the language, and cause the loss of the privilege otherwise attaching to the communication. Farley v. Thalhimer, Va., 49 S. E. Rep. 644.

Banks and banking—Drafts—Powers and Duties of Cashier.—A promise by the cashier of a bank, without consideration to the drawer of a draft, to pay it out of funds of a customer on whom the draft is drawn, held not enforcible against the bank. Bullard Bros. v. Bank of Madison, Ga., 49 S. E. Rep. 615.

Digitized by Google

Trainmen on the Puget Sound Shore Railroad, which was operated between Seattle and Tacoma during the '80s, were required to make report of all animals killed or injured on the right of way. In the blank furnished upon which to make such report was the question, "Where was the animal when you first saw it?"

A cow was run over and killed on the track at a point where there was an unobstructed view ahead along a straight track for several miles. In his report the engineer answered the above question as follows: "Twenty feet up in the air, right in front of the engine."

Benefit Societies—Effect of Sending Blank for Reinstatement.—A letter inclosing a blank application for reinstatement, sent to a member of a mutual benefit society not then in good standing, held not to constitute a waiver of the previous lapses.—Sovereign Camp Woodmen of the World v. Hicks, Tex., 84 S. W. Rep. 423.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

T. Percy Myers, Attorney

Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William J. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. ANDREW J. MILLER, in care of T. Percy Myers, atty., 486 La. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,950. Admn. 22-3t

F. Sprigg Perry, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mrs. Emily V. Sproston, Deceased.
No. 12,984. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William G. Sproston, it is ordered this 1st day of June, A. D. 1905, that notice be and hereby is given to **Legare Phenix and certain unknown next of kin of the decedent**, and to all others concerned, to appear in said court on **Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

Legal Notices.

Thomas Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of John Johnson, Deceased.
No. 12,782. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Walter G. Bradley, it is ordered this 29th day of May, A. D. 1905, that notice be and hereby is given to **Dennis Johnson**, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

E. S. Theall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Bayne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1905. MAE A. BAYNE, 1141 Connecticut ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,946. Administration. 22-3t

Blair & Thom, Solicitors

In the Supreme Court of the District of Columbia.

Josephine Fant et al., Complainants, v. Hamilton G. Fant et al., Defendants. In Equity, No. 25,187.

The object of this suit is to have a trustee appointed to take possession of a certain fund, namely, $35,410, now in the registry of the court, being the proceeds of a sale to the District of Columbia of lot two (2) in square four hundred eighty-nine (489), and to hold the said fund in the same manner and for the same persons, and in the same interests that they would have had in said lot 2 in square 489. On motion of the complainants, it is, this 29th day of May, A. D. 1905, ordered that the defendants, **Hamilton G. Fant, Emma Fant, Clarence A. Fant, Katherine Fant, Paul E. Fant, Emily Reardon, Elise O'Dunne, Josephine Reardon, Emily Reardon, Addie Reardon, Frances Kenney, Frances Kenney, Junior, Josephine Fant, Elizabeth Smucker, Elizabeth Smucker, Junior, Josephine Smucker, Marie Smucker, Joseph Hellen, Mamie Hellen, Johnson Hellen, Mary Hellen, Johnson Hellen, Junior, Mary Hellen, Charles Hellen, Clarence C. Hellen, and Mary E. Moses**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for each of three successive weeks before said rule day in The Washington Law Reporter and The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, by F. E. Cunningham, Asst. Clerk. 22-3t

E. H. Thomas, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **America E. Towner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. LAURA E. TOWNER, 1105 O st. N. W. Attest: WM. C. TARLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,955. Administration. 22-3t

Digitized by Google

Legal Notices.

Hamilton & Colbert, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth S. C. Israel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of May, 1905. HUGH L. BOND, Jr., Md. Trust Building, Balto., Md.; ALFRED Z. HARTMAN, 1210 Bolton st., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,823. Admr. 22-3t

Hallam & Hallam, Solicitors

In the Supreme Court of the District of Columbia.
Calvin Tibbs, Complainant, v. James Bennett's Unknown Heirs, Defendants.
Equity. No. 25,219. Doc. No. 56.

The object of this suit is to declare the title of complainant to lot two (2) in square five hundred and ninety-nine (599), in the city of Washington, District of Columbia, to be good in fee simple by adverse possession. On motion of the complainant, it is this 29th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, devisees, and alienees of James Bennett**, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. j 5-12, j 7-14, a 4-11

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Llewellyn G. Estes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. L. W. ESTES, Corcoran Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,740. Administration. 22-3t

Alexander H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Philip Barry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of May, 1905. DANIEL P. McCARTHY, 610 Penn. ave. N. W.; FRANK P. MADIGAN, 1206 Va. Ave. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,947. Administration. 22-3t

Thos. Walker, Attorney

Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Diana Walker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of January, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. THOMAS WALKER, 506 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,835. Administration. 22-3t

Legal Notices

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louisa Hagner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ALEXANDER B. HAGNER, 1818 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,806. Administration. 22-3t

Chas. E. Riordon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **David Logan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of May, 1905. HANNAH Mc. LOGAN, 1407 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,905. Administration. 22-3t

SECOND INSERTION.

Elbert S. Maloney, Solicitor

In the Supreme Court of the District of Columbia.
Emma V. Wharton v. Robert L. Wharton and Bertha M. Miller. Equity, No. 25,308.

The object of this suit is to obtain an absolute divorce from the defendant, Robert L. Wharton, on the ground of adultery. On the motion of the complainant, it is, this 17th day of May, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

Alexander H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John A. Murphy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **25th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. CATHERINE MURPHY, 350 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,940. Administration. 21-3t

Mason N. Richardson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Frances W. Gager**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 12th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of May, 1905. ELLA Y. BRAYLEY, by Mason N. Richardson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,239. Administration. 21-3t

Digitized by Google

Legal Notices.

J. A. Maedel, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Enders**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. JOHN ENDERS, 1533 Monadnock Blk., Chicago, Ill. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,920. Administration. 21-3t

Thomas L. Jones, Solicitor
In the Supreme Court of the District of Columbia.
Walter Nervis v. Sarah Nervis.
No. 23,082. Equity Docket No. 52.

The object of this suit is to obtain a divorce from defendant on the ground of desertion and adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Bee. On motion of complainant, by his attorney, Thomas L. Jones, it is this 3d day of August, A. D. 1904, ordered that the defendant cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 21-3t

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles A. Burgess**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. GRACE A. RYON, 828 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,925. Administration. 21-3t

John E. Laskey and Ralph Given, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration, c. t. a., on the estate of **Mary McKenney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **22d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. MARY J. COOPER, 701 32d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,198. Administration. 21-3t

John Ridout, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Benjamin F. Hall**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 23d day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of May, 1905. FRANK C. McCATHRAN, administrator, by John Ridout, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,225. Administration. 21-3t

Legal Notices.

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William Wallace Kirby**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. L. CABELL WILLIAMSON, 458 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,936. Admn. 21-3t

Joseph A. Burkart, Solicitor
In the Supreme Court of the District of Columbia.
George M. Strachan et al. v. Thaddeus S. Strachan et al. Equity, No. 25,266.

The object of this suit is to have partition by sale of sublot No. 40, in square number 176, known as premises number 1914 New Hampshire avenue N. W., Washington, D. C. On motion of the complainants, it is, this 25th day of May, 1905, ordered that the defendants, **Thaddeus S. Strachan** and **Florence M. Strachan**, cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

S. Duncan Bradley, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of **Ysidora B. M. Dodge**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 29th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of May, 1905. HARRISON H. DODGE, 1219 32d st. N. W.; JOSEPH H. BRADLEY, 1219 32d st. N. W., by S. Duncan Bradley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,097. Administration. 21-3t

J. S. Barker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth Bate, Deceased.
No. 12,907. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Zebina Moses**, of Washington, D. C., it is ordered, this 25th day of May, A. D. 1905, that notice be and hereby is given to **Maude Sorby and Clifton Sorby**, both of Craven, Assiniboia, N. W. T., Canada, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Leader, published at Regina, N. W. T., Canada, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Digitized by Google

Legal Notices.

J. J. O'Connell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Maguire**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. DENNIS C. SHEA, 101 I street N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,846. Administration. 21-3t

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Helge G. Forsberg**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of May, 1905. GUSTAVE W. FORSBERG, 8th and Water sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,903. Administration. 21-3t

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.
Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 23 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 23 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry**, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; june 2-9; july 7-14; aug. 4-11

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George R. Chapman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. JOHN C. NORWOOD, 1632 Superior st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,699. Administration. 21-3t

Legal Notices.

William H. Linkins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Walter C. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1905. KATHERINE J. FALCONER, 1502 13th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,980. Administration. 21-3t

Hallam & Hallam, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Evalyn Doughty, Deceased.
No. 12,906. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters of administration, with will annexed, on said estate, by Cavour O. Bohrer, it is ordered, this 22d day of May, A. D. 1905, that notice be and hereby is given to **Mrs. Hannah Doughty**, and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Charles T. Hendler, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Susan Turner, Deceased.
No. 12,723. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry J. McGowan, it is ordered this 23d day of May, A. D. 1905, that notice be and hereby is given to **Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Eberhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills**, and the unknown heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

THIRD INSERTION.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Theresa Lewis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1905. JUAN WOODRUFF LEWIS, Brookland, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,889. Administration. 20-3t

Digitized by Google

Legal Notices.

Michael J. Keane, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas J. McHugh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. PATRICK J. DRURY, 210 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,918. Administration. 20-3t

Thomas Walker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Dash**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. CREED W. CHILDS, by Thomas Walker, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,684. Administration. 20-3t

F. W. Matteson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Laura G. Meehan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. MARGARET L. SKERRETT, 1708 P st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,909. Administration. 20-3t

B. F. Leighton and C. Clinton James, Attorneys
In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In re the Estate of Loraine Lipphard, Deceased.
No. 12,129 Admn. Docket 32.

It appearing to the satisfaction of the court that the notification of the trial of the issues relating to the validity of the paper writing bearing date the 27th day of April, A. D. 1898, purporting to be the last will and testament of Loraine Lipphard, deceased, has been, as to the following persons, to wit, William A. Lipphard, Alice Anderson, Thomas A. Anderson, Edward J. Pyle, and John Lipphard, returned "not to be found," it is this 15th day of May, A. D. 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial on the **15th day of June, next**; and that a copy of this order, and of the issues heretofore framed, shall be published twice a week for four weeks in The Washington Post and once a week for four weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: James Tanner, Register of Wills.

ISSUES.

First. Was the said paper writing, dated April 27th, 1898, the last will and testament of the said Loraine Lipphard? Second. Was the said paper writing, dated April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, executed and attested in due form as required by law? Third. At the time of the execution by the said Loraine Lipphard, of said paper writing, dated April 27th, 1898, as her last will and testament, was the said Loraine Lipphard of sound and disposing mind, and capable of executing a valid deed or contract? Fourth. Was the said paper writing, bearing date April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, procured by the fraud or undue influence practiced upon her by any person or persons? Fifth. Was the signature of said Loraine Lipphard, to said paper writing, procured by force exercised upon her by any person or persons? 20-4t

Legal Notices.

Robinson White, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Flavius J. Fisher**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1905. ELIZABETH P. FISHER, 3423 Brown st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,917. Administration. 20-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who, with Elizabeth A. Goodman, now deceased, were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Helen M. Andrus**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 9th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of May, 1905. JOHN RIDOUT, Surviving Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,167. Administration. 20-3t

E. B. Hay, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna L. Norville, Deceased.
No. 12,931. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edwin B. Hay, it is ordered this 17th day of May, A. D. 1905, that notice be and hereby is given to the heirs of the deceased and to all others concerned, to appear in said court on the **22d day of June, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

B. H. Louchs, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Ephraim A. Greenough,
Deceased. No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court that he has sold the two hundred and thirty-six lots situate in Falls Church, Virginia, as described and shown upon a plat and map of said tract filed with the report of such sale to M. E. Church for the sum of eight thousand and nine hundred dollars net, on the following terms: Two hundred and fifty dollars in cash, one thousand dollars within thirty days from the ratification of sale, and one thousand dollars per month thereafter until paid without interest until all is due. It is, therefore, this 15th day of May, 1905, ordered that sale be ratified and confirmed on the **15th day of June, 1905**, unless cause to the contrary is shown before said last mentioned date. Provided that this order be published once a week for three successive weeks before said date in The Washington Law Reporter. THOS. H. ANDERSON, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

Digitized by Google

Legal Notices.

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick Curtin,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. HONORA CURTIN, 1323 N. Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,759. Administration. 20-3t

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia lettters testamentary on the estate of **Ellen E. Bartley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ABRAM S. McCOY, Pension Bureau, City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,890. Administration. 20-3t

William D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Frederick Rush,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 6th day of June, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of May, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,082. Administration. 20-3t

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.

Martha A. Mayse v. Brittania W. Kennon et al.
No. 25,289. Equity Docket No. 56.

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession to the west twenty-two feet and nine inches front by the full depth of lot four, in square eight hundred and eighty-two, in the city of Washington, District of Columbia. On motion of the complainant, it is this 16th day of May, 1905, ordered that **Virginia Cassell and Alexander Cassell,** and the unknown heirs, devisees, and alienees of the following persons, to wit, **Thomas Peter, John Brown, John I. Clark, —— Brown,** and **—— Ives** (late partners trading as Brown and Ives, formerly of Providence, Rhode Island), **George Gibbs and Walter Channing** (late partners trading as Gibbs and Channing), **Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter, next after the date of this order, good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 20-3t

Legal Notices.

J. H. Lichliter, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re Estate of Frederick C. Grose, Deceased.
No. 12,405. Administration.

On consideration of the report of Washington Topham, administrator herein, that he has received an offer at private sale from Ellen O'Dea, to purchase the equity of redemption of lot No. 23, in block No. 13, of Middaugh's subdivision, Bloomingdale, District of Columbia, as the same is more particularly described in said report and the proceedings in this cause, for the sum of $680 cash, of which the sum of $100 has been paid and the balance to be paid on final ratification of sale. It is, this 12th day of May, 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **12th day of June, 1905.** Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 20-3t

FOURTH INSERTION.

George R. Linkins, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

John B. Harry, Complainant, v. The Unknown Heirs, Alienees, or Devisees of James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott(nee O'Reilly), and Margaret Kuhns (nee O'Reilly), Defendants.

Equity No. 25,286. Docket .

The object of this suit is to establish in complainant a fee-simple title by adverse possession to the northerly twenty-five and thirty-five hundredths (25.35) feet front on River Road by the full depth of lot six (6) and all of lots seven (7) and eight (8) in block five (5) and all of lots one (1), two (2) and three (3) in block four (4) of John M. Barry's subdivision of parts of "Friendship" and "Mount Airy" in the District of Columbia, as per plat thereof recorded in county subdivision book 8, page 123, of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, it is this 9th day of May, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of **James O'Reilly, sr., Mary O'Reilly, Bernard O'Reilly, Agnes McDermott (nee O'Reilly), and Margaret Kuhns (nee O'Reilly),** both mediate and immediate, cause their appearance to be entered herein on or before the first rule day occurring after the publication of this order; otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return day, it appearing to the court upon good cause shown, based on the affidavit filed herein, that further publication is unnecessary. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

Wilson & Barksdale, Solicitors

In the Supeme Court of the District of Columbia.

Cornelia C. Ashe et al., Complainants, v. Maria G. Bradley Dewey et al., Defendants. Equity, No. 25,244.

The object of this suit is to establish title to the following described real estate lying and being in the county of Washington, District of Columbia, and known and distinguished as a tract of land lying west of that part of the city of Washington formerly Georgetown, commonly called Fowler's Hill, containing 4.3988 acres, more fully described in the bill of complaint; also a tract of land lying south of the Washington and Great Falls Electric Railroad containing 1.1366 acres, more fully described in said bill of complaint. On motion of the complainants, by Wilson & Barksdale, their solicitors, it is, this 8th day of May, 1905, for good cause shown, ordered that **John R. Livingston,** or his unknown heirs, alienees, or devisees, and each of them, and all other persons interested, cause their appearance to be entered herein on or before the rule day of June, 1905; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for four weeks before said rule day in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 23

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JUNE 9, 1905

CONTENTS.

Editorial 353
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Frederick I. Allen, Commissioner of Patents, appellant, v. United States, ex rel. Geo. A. Lowry et al. 354
Legal Notices 362

Master and Servant—Danger From Separate Work of Fellow Servant.

In Western Electric Co. v. Hauselmann, decided March, 1905, by the Circuit Court of Appeals for the Second Circuit (136 Fed. 564), it is held that where a servant is set to work in a place safe in itself, but in which he is exposed to danger from the doing by other servants of work not connected with his own, the master is bound to employ the necessary means to give him timely warning of such danger, and can not delegate such duty to any other person so as to relieve himself from liability for the negligent failure to give such warning. In that case it appeared that plaintiff was sent to work where he was obliged to stand partly inside the doorway of elevator shafts, and was struck and injured by one of the cars, which were continued in use by other servants. The latter had been directed by the master to give plaintiff warning of the approach of the cars, but this was not done. It was held that the facts justified a finding by the jury that the master did not perform his duty in respect to furnishing plaintiff with a safe place to work, in that it neither stopped the cars nor provided some one who should devote his attention to keeping watch so as to give the plaintiff due warning.

Unfair Competition—Use of Family Name.

In Howe Scale Company et al. v. Wyckoff, Seamans & Benedict, decided April 24, 1905, by the Supreme Court of the United States, and reported in the Advance Sheets for June 1, it is held that unfair competition does not arise out of the use in a corporate name of the surnames of one or more of the incorporators, where such use by the individuals themselves or in a partnership would not be open to that charge. A manufacturer of typewriters under the names "Remington" and "Remington Standard" is held not entitled to protection against the adoption by persons bearing respectively the names "Remington" and "Sholes" of the name "Remington-Sholes" for their typewriters, and the giving of that name to the corporation formed for their manufacture and sale, where the only confusion in the minds of the public as to the origin of the products results from the simularity in names, and not from the manner of their use.

Fraudulent Procurement of Note.

Two points of considerable interest are decided in the case of Yakima Valley Bank v. McAllister, 79 Pac. Rep. 119. Persons claiming to be life insurance agents solicited defendant to take out a policy in the company they claimed to represent, offering to forward his application, obtain a policy, and allow him six weeks in which to examine it, when he could retain it and pay the premium if he was satisfied with it. It was represented that, as evidence of good faith, the defendant must execute a note payable to himself, on which he would not be liable until he indorsed it, and also file a waiver, releasing the company from liability in case he died before deciding to accept the policy. The note was executed, and in signing the release the papers were so placed that the ink in some manner penetrated the paper, so that the defendant's signature appeared as an indorsement on the note. Under these circumstances it was held that the fact that the defendant performed the physical act of indorsing the note did not render him liable thereon, even to a bona fide purchaser. It was further held that evidence of the procurement of similar notes and indorsements, by the same persons, under practically identical circumstances, was admissible for the purpose of showing a systematic plan to defraud.

Principal and Surety—Contribution.—The fact that one surety pays the entire obligation does not relieve the cosurety from liability for contribution. Wash. v. D. Sullivan & Co., Tex., 84 S. W. Rep. 368.

Railroads—Injury to Child on Track.—A child walking along a railroad track held a trespasser, to whom only as such the railroad company owed a duty. Nashville, C. & St. L. Ry. Co. v. Harris, Ala., 37 So. Rep. 794.

Digitized by Google

Court of Appeals of the District of Columbia.

FREDERICK I. ALLEN, COMMISSIONER OF PATENTS, APPELLANT,

v.

UNITED STATES, EX REL. GEORGE A. LOWRY, ET AL.

PATENT OFFICE PRACTICE; APPEALS FROM INTERLOCUTORY DECISIONS IN INTERFERENCES; MANDAMUS.

1. A motion by one of the parties to an interference to dissolve the interference before the final hearing of the question of priority of invention, and before the case is ready for such hearing, is an interlocutory proceeding, and is not appealable unless made so by statute or rule of court.
2. Neither section 482, 4904, or 4909, R. S., nor any other statute, nor any rule of the Patent Office made by the Commissioner of Patents, gives the right of appeal to the examiners-in-chief from decisions made by the primary examiners, on the hearing of a motion to dissolve an interference, holding that a party has a right to make the claim which is the issue of the interference.
3. Where the statute gives the right of appeal in interference proceedings from the decisions of any officer of original jurisdiction, it refers to final decisions. The right to such an appeal should be clear, and if there is any doubt as to the construction of the statutes claimed to confer the right, such doubt should be resolved in favor of the long established and acquiesced in practice of the Patent Office.
4. Whatever right a party to an interference has to contest the right of his adversary to make the interfering claim, such right, if denied, is reviewable, if at all, upon the final decision of the question of priority.
5. An order of the court below awarding a writ of mandamus to compel the Commissioner of Patents to direct the examiners-in-chief to take jurisdiction of an appeal from a decision of the primary examiner refusing to dissolve an interference, and to decide the same upon the merits, reversed, on the ground that the relator had not shown himself entitled to an appeal.

No. 1521. Decided May 24, 1905.

APPEAL by respondent from an order of the Supreme Court of the District of Columbia, at Law, No. 47,053, directing the issue of a writ of mandamus. Reversed.

Mr. John M. Coit for the appellant.

Mr. Oliver Mitchell, *Mr. Edmund Wetmore*, and *Mr. A. V. Cushman* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken from a judgment of the Supreme Court of the District of Columbia, granting the petition of the relators that a mandamus issue commanding the Commissioner of Patents to direct the examiners-in-chief of the Patent Office to reinstate and take jurisdiction of an appeal taken by Lowry from the ruling of the primary examiner denying his motion to dissolve an interference declared by the Patent Office between his unexpired patent and a pending application for patent filed by one William L. Spoon.

The interference was declared under section 4904 of the Revised Statutes.

The record discloses that the interference was declared and notice thereof duly given to the parties as required by law.

In accordance with Patent Office Rule 122, which is one of the rules promulgated by the Commissioner of Patents under the authority conferred upon him by section 483 of the Revised Statutes, Lowry moved to dissolve the interference upon the various grounds specified in the rule and that motion was transmitted by the examiner of interferences to the proper principal examiner for a hearing. The reason urged at the hearing by Lowry for the dissolution was that Spoon had no right to make the claims in controversy because his application was for an inoperative device.

The petition sets forth and the answer admits that various proceedings were had in the interference after Lowry's motion to dissolve was transmitted to the principal examiner and before his final refusal to dissolve the interference, which denial led to Lowry's appeal to the examiners-in-chief, which was by them dismissed and which is required to be reinstated and heard by the mandamus granted by the court below.

It is unnecessary to refer to these various proceedings, for no allegation is made that any of them were irregular or that they were contrary to the statutes and rules governing the conduct of interference proceedings, and, therefore, they have no legitimate bearing upon the question raised by the petition for the mandamus.

The facts which raise the question as to the relator's right to the mandamus may be briefly summarized. Lowry having been made a party to an interference, as provided by section 4904, made a motion for its dissolution in accordance with Patent Office Rule 122, which motion being denied by the principal examiner, who ruled that Spoon had the right to make the claims, Lowry filed an appeal to the examiners-in-chief, although Patent Office Rule 124 expressly provided that no appeal could be taken from a ruling by the examiner that a party to an interference had the right to make the interfering claims. Upon motion duly made Lowry's appeal was dismissed by the examiners-in-chief, and, the Commissioner of Patents having denied Lowry's petition for an order directing the examiners-in-chief to reinstate and determine the appeal, he applied to the Supreme Court of the District of Columbia for a writ of mandamus, which was granted.

The question which it becomes necessary for us to decide is simply whether the court below erred in issuing the mandamus commanding the Commissioner to direct the examiners-in chief to reinstate and determine the appeal. It is contended on behalf of the relators that the rule is contrary to law because it deprives a party to an interference of the right to an appeal given him by the statute. If this contention be correct, then the court below rightly granted the mandamus. If not, its grant was an error and must be reversed. The paragraph of Rule 124 in question provides that from a decision of the primary examiner, affirming the patentability of the claim or the applicant's right to make the same, no appeal can be taken. No question has or can be raised that the Commissioner of Patents has the right to regulate the conduct of proceedings in the Patent Office, including thereunder interference proceedings, by lawful rules, provided they are approved by the Secretary of the Interior, as the rule in question has been. Sec. 483, U. S. Revised Statutes.

It was incumbent upon Lowry, in order to entitle him to a writ of mandamus, to show that he had a clear right to appeal under the stat-

Digitized by Google

utes relating to appeals in interference cases. Ex parte Cutting, 94 U. S. 14.

The sections of the statute and the rules of the Patent Office, which are to be considered in disposing of this appeal, are sections 482, 483, 4904, and 4909, and Rules 122 and 124. These read as follows:

"Sec. 482. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for reissues of patents, and in interference cases; and, when required by the Commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them.

"Sec. 483. The Commissioner of Patents, subject to the approval of the Secretary of the Interior, may from time to time establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

"Sec. 4904. Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who is adjudged to the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than 20 days, as the Commissioner shall prescribe.

"Sec. 4909. Every applicant for a patent or for the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary examiner, or of the examiner in charge of interferences in such case, to the board of examiners-in-chief; having once paid the fee for such appeal.

"122. Motions to dissolve an interference upon the ground that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude a proper determination of the question of priority, or which deny the patentability of an applicant's claim, or his right to make the claim, should, if possible, be made not later than the twentieth day after the statements of the parties have been received and approved. Such motions, and all motions of a similar character should be accompanied by a motion to transmit the same to the primary examiner, and such motion to transmit should be noticed for hearing upon a day certain before the examiner of interferences. When in proper form, the motion presented will be transmitted by the examiner of interferences, with the files and papers, to the proper primary examiner for his determination, who will thereupon fix a day certain when the said motion will be heard before him upon the merits, and give notice thereof to all the parties. If a stay of proceedings be desired, a motion therefor should accompany the motion for transmission.

"124. Appeal may be taken directly to the Commissioner from decisions on all motions except the following: (1) On motions to dissolve which deny the patentability of applicant's claim; (2) on motions to dissolve which deny the right of an applicant to make the claim; (3) on motions involving the merits of the invention. Decisions on these motions, when appealable, go to the examiners in chief, in the first instance, and upon such appeals the questions shall be heard inter partes.

"From a decision of the primary examiner affirming the patentability of the claim or the applicant's right to make the same no appeal can be taken."

It will be helpful, in determining the question, to consider the history of the legislation relating to interferences and the rules promulgated from time to time by the Commissioner of Patents. Congress, as early as 1793, recognizing the likelihood of two or more different parties claiming a prior inventorship of the same invention, and the necessity of providing for a determination of such question, made provision therefor, which in some form or other has continued to this day. The Patent Act of 1793 provided that in case of interfering applications, the same should be submitted to three arbitrators, the decision of a majority of whom should be final as far as related to the grant of a patent. This provision remained in force until the Patent Act of 1836. This act created the Patent Office and inaugurated the present examination system, based on novelty as well as usefulness. Under the prior acts it may be stated that patents were granted without examination as to novelty, the only questions being considered were usefulness, importance, and the form of the papers. Section 8 of the act of 1836 provided for the determination of questions of priority of invention between interfering applications and between such applications and unexpired patents. Here first appears the provision for bringing unexpired patents into interference proceedings. Of course the patent could not be recalled or revoked should the interference result in an award of priority to the applicant. The patentee could then, as now, bid defiance to the Patent Office. All that could be done was to issue a patent to the applicant, in which event there would be two outstanding patents for the same invention. Section 16 of the act provided a remedy for this, and also further relief for the applicant should his application for a patent be denied by the decision of the board of examiners. Such relief was by bill in equity, which could be filed by either party, whereupon the court could consider the whole matter de novo, and declare either or both patents void in whole or in part, or, where one party was an applicant, could award a patent to him. In other words, interference proceedings in the Patent Office were not final under the act of 1836, nor have they since been, for similar provisions are found in the later statutes on the subject and are now set forth in sections 4915 and 4918 of the Revised Statutes. Under the act of 1836 the Commissioner was directed to give notice to the parties, and, if either was dissatisfied with his decision on the question of priority made after hearing, an appeal could be taken to a board of three disinterested persons appointed by the

Digitized by Google

Secretary of State, and the decision of a majority was binding upon the Commissioner of Patents. By the Patent Act of 1839 this board was abolished and its powers were vested in the chief justice of the District Court of the United States for the District of Columbia. The act of 1852 extended a like authority to the assistant judges of the circuit court of said District. The next change in procedure occurred when the Patent Act of March 2, 1861, went into effect. Section 2 of this act provided for the appointment of three examiners-in-chief, whose duty as to appeals in interference proceedings will later be set forth. From their decisions appeals were provided to the Commissioner of Patents. At this time there was no such officer as an examiner of interferences and the control of interferences was in the hands of the various primary examiners. Their decisions in both ex parte and interference cases were appealable successively to the examiners-in-chief, the Commissioner of Patents, and to any one of the justices of the circuit court. The next change occurred when the act known as the "Consolidated Patent Act," approved July, 1870, went into effect. This act provided for the appointment of a special examiner of interferences to decide the question of priority in the first instance, and whose decisions were appealable successively to the examiners-in-chief and to the Commissioner, whose decision was final and so remained until the Court of Appeals of the District of Columbia was established in 1893. Section 42 of the act of 1870 contains the provision for interferences. The act of 1870 was repealed by the Revised Statutes of 1874, but section 42 of the earlier act was continued in the same terms as section 4904 of the Revised Statutes, which provides for the decision of the question of priority.

From the foregoing it is apparent that interferences were instituted for the purpose of deciding the question of priority of invention, and for no other purpose, and it logically follows that the reviews or appeals provided were to be from the decisions awarding priority by the officer who was authorized to decide the question of priority in the first instance. For example, the act of 1836 in providing for appeals expressly says that the appeal is one from the decision on the question of priority. The act of 1861 providing for the appointment of examiners-in-chief does not in words specify what the appeals in interference cases are to embrace, but manifestly they could only relate to the question of priority, as that was the only question for the determination of which the interference was instituted. When they came to pass upon the question of priority they doubtless might pass upon such matters as were essential to the correct determination of that question. Neither the statute creating the board of examiners-in-chief, nor any other, provides for motions to dissolve an interference for any reason after it was once declared, and not providing for such motions they do not provide for any appeals therefrom. In fact, motions to dissolve are not the creature of any statute, but of the rules of the Patent Office, and no provision, by Patent Office rules, for such motions was made until many years after the statutes relating to interferences were enacted. Section 42 of the act of 1870, re-enacted in 1874 and now in force and known as section 4904 of the Revised Statutes, in line with the earlier statutes, provides for the institution of interferences for the sole purpose of determining the question of priority of invention, and the fair intendment of section 4909, which provides for appeals in interference cases, is that such appeals only go to the question of priority of invention, for the determination of which they are instituted.

We can not emphasize too strongly that, in our opinion, the statutes relating to interferences only provide that they shall be instituted for the sole purpose of determining priority of invention, and that it logically follows that appeals in such proceedings, so far as the statutes go, only provide for appeals from the decisions of priority. The Commissioner of Patents, under the authority given to regulate the proceedings in the Patent Office, is clothed with power to regulate all interlocutory proceedings in interference cases by rules not inconsistent with law. If he deems it wise to provide, after the interference has once been declared, for remanding the interference to the primary examiner for the purpose of an interlocutory hearing and determination of a motion to dissolve it for any reason which he considers may be in the interest of the public or the parties, we take it that he has full power to do so, and that he may also provide that such motions may or may not in some or all respects be reviewed by the appellate tribunals of the Patent Office, and in so doing he is not thereby depriving any party of any statutory right to have all questions passed upon at final hearing, and on appeals therefrom, which are necessary for a correct determination of the question of priority, which is the sole question for which interferences are declared. If we find that at the time of the enactment of section 4909 there was no provision either in the statutes or the rules of the Patent Office for any such proceeding as a motion to dissolve, we fail to see how it can be assumed that Congress meant to provide for an appeal from the denial of a motion of so plainly an interlocutory character. It would be putting a forced construction upon the statute to so hold. If it be assumed that there is a legal right in a party to an interference, after it is once declared, to make an interlocutory motion for its dissolution before the final hearing on the question of priority, irrespective of any statute or rule, we fail to comprehend upon what principle it can be successfully contended that the right of an appeal to a higher tribunal lies, in the absence of express grant of such an appeal. It is an interlocutory matter, and at best brings up only partially and indirectly the question of priority, and if successive appeals be permitted the result would be only to add another terror to the many surrounding an interference proceeding in the Patent Office. From the simple and summary mode first adopted for determining the question of priority of invention that proceeding, by system of Patent Office rules, has grown to be a veritable old man of the sea, and the unfortunate inventor who becomes involved therein is a second Sinbad the sailor. It is known to all who are familiar with the practice in interference proceedings that by motions,

Digitized by Google

petitions, and appeals of every conceivable character that the ingenuity of the skilled attorney can devise, interferences can be and are prolonged for years, to the injury of the public, and often to the financial ruin of the parties. It does not appear when the present interference was declared, but in view of all the proceedings had, as disclosed by the record, it has been a long time and no testimony has yet been taken. Should we affirm the decision of the court below, the reasons for which are not set forth, and reverse the practice of the Patent Office as it has stood unchanged for at least twenty-five years, we should be placing still another burden of successive piecemeal appeals upon the unfortunate interferant in a proceeding which, when decided, is not final, for, as we have shown, when the defeated party is an applicant he can, if defeated in the Patent Office, proceed by bill in equity under section 4915 of the Revised Statutes to obtain a patent, and if one be finally awarded him he can again try the question of priority with his former successful antagonist under section 4918 of the Revised Statutes. In the present case, as we have shown, should a patent be awarded to Spoon, the question of priority could be at once retried by Lowry, or by Spoon, under the latter section. We refer to this feature of the case with full knowledge that the motives of a party in asserting a legal right can not deprive him of it, and without in the remotest manner intending to question the good faith of Lowry, but because the question is so important to the rights of the public and of inventors, which are best subserved by a speedy grant of lawful patents to rightful parties, and with the least possible expense. We should not, however, in the light of what is really accomplished through an interference, go out of our way, or unduly search for some plausible ground on which to predicate a finding that Lowry has a clear right of appeal from an examiner's decision in an interlocutory proceeding. Such rulings, as we have said, are not appealable prior to final judgment or decree unless it be so provided by statute. Ency. of Pl. and Pr., Vol. 2, page 81.

We have stated in general terms that we find nothing in the statutes permitting an appeal in such interlocutory motions, but before referring more particularly to the statutes in question it will be well to examine the history of interlocutory motions to dissolve interferences, provision for which has from time to time been made by the rules of the Patent Office. The first provision in the rules relating to their dissolution because improperly declared is found in Rule 58 of August 1, 1869, eight years after the creation of the board of examiners-in-chief. This rule says:

"58. Cases of interference will, when the issue is made up and the testimony taken, be tried before an examiner specially detailed for that purpose. If an interference has been properly declared, it will not be dissolved without judgment of priority, founded upon the testimony or the written concession of one of the parties."

It will be seen that this does not, except by inference, provide for a dissolution of an interference, and no ground is stated upon which a motion may be based, save the general one that it has been improperly declared, and no provision of any kind is made for an appeal from any order made after the decision of the motion.

The act of 1870 having provided for an examiner of interferences, provision was made in Rule 59, of July 15, 1870, for their trial before uch officer. Its full provisions are as follows:

"59. Cases of interference will, when the issue is made up and the testimony taken, be tried before the examiner in charge of interferences. If an interference has been properly declared, it will not be dissolved without judgment of priority, founded upon the testimony or the written concession of one of the parties, unless the invention is found not to be patentable, or to have been abandoned, or that it has been in public use for more than two years prior to the application of either party, or that no interference in fact exists."

The last paragraph of this rule, as amended in 1871, contains the first express provision for an interlocutory motion for dissolution of an interference. It says:

"A motion for a dissolution of an interference on the ground that it was improperly declared, if made before the taking of testimony, will be heard by the primary examiner who declared the interference."

On September 1, 1873, the following clause was added to the rule:

"Upon such hearing the primary examiner will recommend the granting or refusal of such motion, and the examiner in charge of interferences will order accordingly."

The rule was changed April 1, 1875, so as to read as follows:

"59. An interference will not be declared until the subject-matter involved is decided to be patentable. If after being declared it is found that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude the proper determination of the question of right between the parties, it will be dissolved, and an appeal may be taken to the Commissioner in person."

It will be seen that here first is made any provision for an appeal from the decision of the interlocutory proceeding and such appeal was allowed to the Commissioner in person.

November 1, 1876, the phraseology of this rule was changed in matters not material to the question under consideration and the following clause added to it: "But if the examiner should decide that the subject-matter is not patentable in view of the state of the art the interference will be dissolved and the matter decided upon can be proceeded with ex parte." Without material modification this rule remained in force until the general revision of rules of December 1, 1879, when the following rules relating to dissolution were adopted:

"116. Motions to dissolve an interference which deny the patentability of an applicant's claim, or his right to make the claim, will be submitted to the examiner of interferences before the day fixed for filing the statements provided for in Rules 97, 101, and 102, and will be transmitted by him, with the files and papers, to the primary examiner, who will take jurisdiction of the case for the determination of such motions, and will return the files and papers to the examiner of interferences, with his decision, at the expiration of the time limited for appeal,

Digitized by Google

if no appeal shall have been taken, or sooner if the party entitled to appeal shall file a waiver in writing of his right of appeal; and such decision will be binding on the examiner of interferences unless revised or modified on appeal. From a decision of the primary examiner on such motion, denying the patentability of a claim or the right of an applicant to make it, an appeal may be taken ex parte to the examiners-in-chief; but from his decision affirming its patentability or the applicant's right no appeal can be taken.

"117. Motions to dissolve an interference upon the ground that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude the proper determination of the question of priority between the parties, and all other lawful motions except those mentioned in Rule 116, will be made before the tribunal having jurisdiction at the time. . . .

"118. Appeal may be taken directly to the commissioner from decisions on all motions, except motions to dissolve interferences denying the patentability of applicants' claims or their right to make the claims, and other lawful motions involving the merits of the case, which, when appealable, may be appealed to the board or examiners-in-chief (see Rules 116, 141)."

Here first appears provision for an interlocutory motion to dissolve an interference upon the ground that a party to it has not the right to make the interfering claim, which was the ground urged by Lowry upon the hearing of his motion. The provisions for appeals are found in Rules 116 and 118, which provide an appeal to the examiners-in-chief from (among other decisions) one denying the right of an applicant to make the interfering claim. No provision is made for an appeal from a decision affirming his right to make the interfering claim. September 15, 1880, the following clause was added to Rule 118, and it has been ever since in force. It reads, "from a decision affirming the patentability of the claim, or the applicant's right to make the same, no appeal can be taken." This clause simply makes clear and positive the then well-settled rule of the office that no appeal was permitted in any proceeding where the examiner held that a claim was patentable to the party making it. The Commissioner, however, was of course not debarred from exercising his supervisory power and for lawful reasons reversing the holding of the examiner and refusing to allow the claim. From that time on changes have been made in the rules relating to the conduct of interferences until the rules have the phraseology shown in present Rules 122 and 124. It will be seen that at no time has an appeal been provided from a decision rendered on hearing an interlocutory motion for a dissolution of an interference affirming the right of a party to make the interfering claim.

It is urged on behalf of appellees that Rule 55 of July 15, 1870, and Rule 55 of 1871 (the latter when read in the light of Rule 48 of the same date), provided for appeals to the examiners-in-chief from decisions on interlocutory motions for the dissolution of interferences. These rules are as follows:

"55. In cases of interference, parties have the same remedy by appeal as other applicants, to the examiners-in-chief and to the Commissioner, but no appeal lies in such cases from the decision of the Commissioner. Appeals in interference cases should be accompanied by a brief statement of the reasons thereof.

"55. In cases of interferences appeals may be taken to the examiners-in-chief and to the Commissioner in the manner provided in Rule 48.

"48. In cases of interference parties have the same remedy by appeal to the examiners-in-chief and to the Commissioner, as in ex parte cases, but no appeal lies in such cases from the decision of the Commissioner." . . .

We do not so read them, because at the time of their promulgation there were in force no rules providing for such motions, and, secondly, because the statute of 1870 relating to appeals provides that the appeals in interference were only from final decisions awarding priority.

Nor, as we have said, can authority for appeals in such matters to the examiners-in-chief be predicated upon the clause of Rule 59 of 1875. The 1877 Rule 59 is, in respect to appeals, very similar to that of 1875, but counsel for appellees seem to have overlooked that rule and considered Rule 59 of 1877 as a new rule. They have not quite correctly quoted Rule 59 of 1877. But both rules give the right of appeal, not to the examiners-in-chief, but to the Commissioner, and it will be remembered that at this date no provision was made in the rules for interlocutory motions to dissolve interferences on the ground that a party to it had not the right to make the interfering claim.

While we recognize the rule, as laid down in Houghton v. Payne, 194 U. S. 88, and in other decisions of the Supreme Court, that if a practice is contrary to law it is not made lawful by the practice of a department for a long period of time, yet due regard should be given to a practice which admittedly has prevailed for more than twenty-five years in proceedings of a judicial character, even should there be a reasonable doubt in the mind of the court as to the proper construction to be placed upon a statute. The Supreme Court said in Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1:

". . . If the statute be not so explicit as to preclude construction; if upon applying to it the established rules of interpretation; if looking at it in the light of previous legislation on the subject, if there be reasonable ground for adopting one of two constructions; this court, without departing from sound principle, may well adopt that construction which is in harmony with the settled practice of the executive branch of the Government."

With such light as is afforded from a consideration of prior statutes and the rules made by the Commissioner of Patents under statutory authority, we will more fully consider section 4909, which is the same as section 46 of the act of July 8, 1870. Provision was first made for a board of examiners-in-chief by section 2 of the act of March 2, 1861. That section provided that the duty of the board was "on the written petition of the applicant for that purpose being filed, to revise and determine upon the validity of decisions made by examiners when adverse to the grant of letters patent and also to revise and determine in like manner

Digitized by Google

upon the validity of the decisions of examiners in interference cases," etc. Manifestly, the appellate power to revise the decision of examiners in interference cases referred to such decisions as examiners then had the power to make in such proceedings, and we are not referred to any statute or Patent Office rule, nor have we been able to discover any such statute or rule, which gave to the examiners any question for them to decide but that of priority. There was at that time no statutory authority lodged in examiners to decide interference cases, but as the business of the Patent Office increased it became necessary for the Commissioner of Patents to delegate more and more of his duties to his assistants, but no statutory authority is shown to have been given to the Commissioner at this time to decide more than the question of priority of invention. Undoubtedly it was within his power and his duty in deciding that question to examine and decide all ancillary matters necessary to the correct determination of the main question, and when he delegated his authority in interference cases, so far as he could, to his assistants, it is fair to presume that such ancillary questions, if necessary to the decision of the question of priority, could be examined and decided by them. But it by no means follows that such ancillary questions were to be decided by him, or them, in advance of the decision of the main question—that of priority. Therefore we conclude that when an appeal was given to the examiners-in-chief to review the decisions of examiners in interference cases, Congress had not in mind to confer power of review upon them except as to the question of priority, and such ancillary questions as the examiners had passed upon when deciding the question of priority for which the interference was instituted. When section 46 of the act of 1870 was written there had been created an examiner of interferences, who took the place of the examiners in deciding the only question for which an interference is instituted. Therefore we find provision made for appeals from his decisions, and this was carried forward in section 4909 of the revision. For convenience, we again set forth this section:

"Sec. 4909. Every applicant for a patent or for the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary examiner, or of the examiner in charge of interferences in such case, to the board of examiners-in-chief, having once paid the fee for such appeal."

In the light of the previous statutes we think that the proper construction to be placed on this section is as though it read, every applicant for a patent or for the reissue of a patent, any of the claims of which have been twice rejected, may appeal from the decision of the primary examiner, and every party to an interference may appeal from the decision of the examiner in charge of interferences in such case, to the board of examiners-in-chief. In other words, to abbreviate and make the section more succinct the words "may appeal from the decision" were used but once, but we think that thereby clearness was sacrificed for brevity. We are also of the opinion that the decisions relating to interferences, referred to in sections 482, 4904, and 4909 of the Revised Statues, from which appeals are allowed to the examiners-in-chief and from them to the Commissioner of Patents, are final decisions and not such as are made in interlocutory matters which do not of themselves preclude and prevent a decision of the question of priority, which is, as we have said, the purpose for which interferences are instituted.

The act of 1893 which created this court provides that "any party aggrieved by a decision of the Commissioner of Patents in any interference case may appeal therefrom to said Court of Appeals." We have construed that clause to refer only to final decisions by the Commissioner in interference cases, and have refused to take jurisdiction and decide interlocutory questions sought to be brought before us on appeal in advance of an appeal taken in such cases to review a final decision awarding priority of invention. As we said in Westinghouse v. Duncan, 2 App. D. C. 131, in referring to appeals allowed by the statute, "the terms of the statute should receive a reasonable interpretation and be so construed as to avoid multiplying litigation or producing unnecessary delay and expense to the parties concerned, and to prevent, as far as possible, embarassment and hindrance to the proceedings in the Patent Office." We think this reasoning applies equally to appeals in the Patent Office in interlocutory proceedings in interferences. There should be some limit on appeals, for where three millions of dollars have been invested, as stated in this case, by the party holding the patent, there is every incentive to prolong the proceedings until the expiration of the patent, and if then the applicant is successful it means a second patent for 17 years, and the public, instead of paying tribute for 17 years, will have had a patent monopoly existing for twice that period, or for a goodly portion of it.

The power to decide the question of priority, which is the sole question for which interferences were provided, as shown by a reading of every statute on the subject enacted from 1793 down to the present time, having been transferred from the examiners generally to the particular examiner designated as the examiner of interferences, it became necessary to transfer this right of appeal in interferences from the decisions of such examiners to the examiner of interferences. It was not, as an examination of the rules of the Patent Office has shown, until 1871 that any provision was made for the dissolution of an interference before testimony had been taken and before a decision on the question of priority was in order. Whether in the light of experience it has proven to have been in the interest of interferants and of the public, to provide the elaborate system of preliminary or interlocutory motions to dissolve interferences, which has been the outgrowth of the power lodged in the Commissioner under section 483, is perhaps a debatable question. However that may be, we think it clearly within his power in making provision for these interlocutory motions to limit the right of appeal where, as in the present case, the examiner has held that the applicant had the right to make the claims of the interference. Whatever right the

Digitized by Google

relators may have to the judgment of the appellate tribunals of the Patent Office and of this court upon the question of an absence of right in Spoon to make the interfering claims because his device is inoperative, we think that right is not through an appeal from the refusal of the examiner to dissolve an interference upon the hearing of an interlocutory motion made for that purpose, where no right of appeal is granted by the rule under which the motion is made. We take it that the Commissioner could abrogate bote Rules 122 and 124 without depriving parties to an interference of any statutory right. If he has the right to make rules for interlocutory motions, he certainly has the right to repeal them.

The right of a party to make the claim of an interference is not finally determined by the decision of the examiner on a motion for a dissolution. This is clearly shown by Rule 126 of the Patent Office under which the examiner of interferences or the examiners-in-chief before or on deciding the question of priority are authorized to call the attention of the Commissioner to the fact that no interference exists, or that there is a statutory bar to the grant of a patent, etc., whereupon the interference may be remanded to the primary examiner for examination and decision. Appeals are allowed from his decision as in other cases. It is not necessary in this proceeding to construe this rule or to pass upon the question whether the lack of a right of party to an interference to make a claim by reason of the inoperativeness of the invention disclosed in his application, does or does not relate to the question of priority as referred to in said rule. However this may be, it would seem that it might in many cases be quite difficult to decide the question of priority where the evidence showed that the device disclosed in the application was not operative. It will be time, however, to decide that question when it is presented in a case where we are called upon to decide the question of priority. We have, however, reviewed other ancillary questions when they have properly come before us on appeals from final judgments awarding priority of invention. Stevens v. Sehr, 11 App. D. C. 245. We have declined to entertain appeals from decisions of the Patent Office that were not final decisions.

We are clearly of the opinion that the court below erred in granting the petition for the writ of mandamus. Our reasons, summarized, are these: That a motion to dissolve an interference before the final hearing of the question of priority, and before the case is ready for such hearing, is an interlocutory proceeding and is not appealable unless made so by statute or rule of court; that no statute, and, more specifically stated, neither sections 482, 4904, or 4909 of the Revised Statutes, nor any rule of the Patent Office made by the Commissioner, gives the right of appeal to the examiners-in-chief from decisions made by the principal examiners on the hearing of a motion to dissolve, holding that a party has the right to make the claim which is the issue of an interference; that where the statute gives the right of appeal in interferences from decisions of any officer of original jurisdiction it means final decisions; that the right to such an appeal should be clear, and that if there is any doubt, although we believe there be none, as to the construction of the statutes claimed to confer the right, such doubt should be resolved in favor of the long established and acquiesced-in practice of the Patent Office, which we believe is in the interest of interferants; that the provision for interlocutory motions to dissolve interferences is the creature of a rule and not founded on statutory enactment and that a party to an interference is not deprived of any statutory right to an appeal by reason of the rules not providing for an appeal from a decision of the examiner that a party has a right to make the interfering claim; that whatever right a party to an interference has to contest the right of his adversary to make the interfering claim, such right if denied is reviewable, if at all, upon the final decision of the question of priority, and such right of appeal as he has to have that question decided is to be considered on the hearing of the statutory appeals allowed from the decision of the question of priority by the examiner of interferences.

The relators not having shown that they have a clear right of appeal which has been denied are not entitled to the writ of mandamus and therefore the court below erred in granting the order of January 14, 1905, awarding a writ of mandamus directing the Commissioner of Patents to direct the examiners-in-chief to reinstate and take jurisdiction of Lowry's appeal and to entertain and consider the merits thereof and to decide the same upon the merits. It follows that the order granting the writ of mandamus should be reversed, with costs, with directions to discharge the rule to show cause and to dismiss the petition. It is so ordered.

Reversed.

Accident Insurance—Intentional Injury.—Where deceased died from a shot fired by third persons while he was in custody of officers, such death was caused by intentional injuries inflicted by another within an exception of an accident policy. Jarnagin v. Travelers' Protective Association of American, U. S. C. C. of App., Sixth Circuit, 133 Fed. Rep. 892.

Accident Insurance—Sub-Agent—Authority to Accept Note for Premium. A sub-agent of insurer held without authority to accept insured's note for the first premium and thereby waive a provision of the policy requiring payment in cash. Pennsylvania Casualty Co. v. Union, U. S. C. C. of App., Second Circuit, 133 Fed. Rep. 907.

Evidence—Letters.—A letter held not objectionable, because not shown to have been in the handwriting of the person whose correspondence it purported to be.—Sun Mfg. Co. v. Egbert & Guthrie, Tex., 84 S. W. Rep. 667.

Justice blanks of every description for sale at this office.

Digitized by Google

Humor of the Law.

The Lawyer: "Do you want a divorce without publicity?"

The Lady: "Sir, you seem to have forgotten that I am an actress!"—Chicago Daily News.

"I haven't seen your cashier for several days."

"No; he's gone out of town."

"Gone for a rest, I suppose."

"We haven't found out yet whether he's gone for a rest or to escape it."—Philadelphia Record.

"If yoh husband beats you, mebbe you kin had him sent to de whippin'-pos'," said Mrs. Potomac Jackson.

"If my husdan' ever beats me," said Mrs. Toliver Grapevine, "dey kin send him to de whippin'-pos' if dey wants to. But dey'll have to wait till he gits out'n de hospital."—Washington Star.

A witness who had given his evidence in such a way as satisfied everybody in court that he was committing perjury, being cautioned by the judge, said at last:

"My lord, you may believe me or not, but I have not stated a word that is false, for I have been wedded to truth from my infancy."

"Yes, sir," said Sir William Maule; "but the question is, how long have you been a widower."

An English lawyer was cross-examining the plaintiff in a breach of promise case. "Was the defendant's air, when he promised to marry you, perfectly serious, or one of jocularity?" he inquired.

"If you please, sir," was the reply, "it was all ruffled with 'im a-runnin 'is hands through it."

"You misunderstand my meaning," said the lawyer. "Was the promise made in utter sincerity?"

"No, sir, an' no place like it. It was made in the wash'ouse, an' me a wringing' the clothes," replied the plaintiff.—*Harpers' Weekly.*

A janitress at work in the office of a young attorney came into his private room to ask advice, saying she would pay whatever it was worth. After hearing her story of how she had been buying her household furniture on the installment plan, how she had learned, when too late, that the range would not bake, and how the dealer, refusing to make it "good," threatened to seize everything under his contracts, the young attorney advised her what to do, and explained the course she had to follow. The next day her small son came in with the message—"Maw says you owes her forty cents for 'scrubben out,' 'nd says to take what she owes yous for what yous told hern out o' it, 'nd to guve me the rest."

Estoppel—How Created.—An equitable estoppel is not created without a change in the situation of one of the parties in reliance on the deeds or statements of the other, followed by damage.—Hougen v. Skjervheim, N. Dak., 102 N. W. Rep. 311.

Federal Courts—Habeas Corpus.—Petitioners held properly discharged on habeas corpus by a federal court from imprisonment by a State for murder on account of the killing of a man while acting as members of a posse comitatus called to assist in his arrest on a capias issued by said federal court.—State of West Virginia v. Laing, U. S. C. C. of App., Fourth Circuit, 133 Fed. Rep. 887.

Ferries—Licenses—Littoral Rights.—A riparian owner held entitled to an injunction restraining an operator of a ferry, who had not procured the license required by Rev. St. 1895, art. 4798, and who had no valid permission to use the land, from landing the ferry there.—Parsons v. Hunt, Tex., 84 S. W. Rep. 644.

Husband and Wife—Corporate Stock in Husband's Name.—A wife, who allows corporate stock owned by her to stand on the corporate books in the name of her husband, has the burden of showing that no fraud or injury resulted to her husband's creditors. Magerstadt v. Schaefer (Ill.), 72 N. E. Rep. 1063.

Husband and Wife—Fraudulent Conveyance.—Personal property bought by a wife with the proceeds of real property, which as to creditors belong to her husband, may be subjected to the lien to which the proceeds of the real property would have been subject. Mertens v. Schlemme, (N. J.), 59 Atl. Rep. 808.

Gifts—Conditioned on Future Support.—An act of a married man and his wife, by which he divested himself of all of his property in consideration of promise of future support, held null and void. Harris v. Wafer, La., 37 So. Rep. 768.

Guardian and Ward—Sale of Property Without Advertising.—Under Ky. St. 1903, sec. 14a, an infant may, with the chancellor's approval, consent, through his statutory guardian, to a judicial sale of his real estate without newspaper advertisement. Hieatt v. Schmidt, Ky., 84 S. W. Rep. 740.

Fire Insurance—Proofs of Loss.—Failure to furnish a certificate of a justice of the peace to insurer in a fire policy held no bar to an action on the policy. Norris v. Equitable Fire Assn. (S. Dak.), 102 N. W. Rep. 306.

Negligence—Showing Subsequent Precaution Against Injury.—It is not permissible to show that, after an injury to an employee from a machine, precautionary measures were taken to protect other employees. Davis v. Kornman, (Ala.), 37 So. Rep. 789.

Partnership—Seizure of Property.—An order releasing on bond to defendant partner the property of the firm, seized at the instance of his copartner in a suit for an accounting, will be reversed, as likely to work irreparable injury. Boimare v. St. Geme (La.), 37 So. Rep. 770.

Digitized by Google

Statute of Frauds—Sale—Receipt of Sample.

In Richardson v. Smith et al., decided by the Court of Appeals of Maryland, the plaintiffs sued to recover for 633 cases of tomatoes, relying upon the delivery to one of the defendants of a couple of cans of tomatoes at the time of the alleged sale. The evidence showed that the cans were given as samples, and were not intended to be included in the sale. It was held that the receipt of the sample cans did not comply with the requirements of the statute of frauds that part of the goods sold shall be received and accepted by the buyer to render the transaction a valid sale, in the absence of a note or memorandum in writing being signed, or of something being given in earnest to bind the bargain.

Railroads — Negligence—Accident at Crossing.—A street railroad company held negligent in backing engine across city street in the evening without a light on the engine or a lookout. Illinois Cent. R. Co. v. Hays' Admr., Ky., 84 S. W. Rep. 338.

Adverse Possession — Use by Owner and Others.—Title by adverse possession held not acquired, where land is used equally by persons having the paper title and others. Spencer Christian Church's Trustees v. Thomas, Ky., 84 S. W. Rep. 750.

Equity—"No Wrong Without a Remedy."—An injury which the written law renders a nonactionable wrong, or not a wrong at all, is not within the maxim that "there is no wrong without a remedy."—Pietsch v. Milbrath, Wis., 102 N. W. Rep. 342.

Alteration of Instruments — Acknowledgment.—Attaching false acknowledgment to a contract employing a broker to sell land, and the signing of the agreement by the broker and a witness without the owner's knowledge after execution, are not material alterations. Canfield v. Orange, N. Dak., 102 N. W. Rep. 313.

Bankruptcy — Partnership — Individual Assets.—Where a bankrupt firm had no assets, and both partners were insolvent, the entire individual estate of one of the partners was applicable to his individual creditors.—In re Janes, U. S. C. C. of App., Second Circuit, 133 Fed. Rep. 912.

Bankruptcy—Landlord's Lien.—Where property of a bankrupt subject to a landlord's lien was sold under an agreement with the trustee that the lien should attach to the fund derived therefrom, the lien was preserved for the benefit of the landlord.—In re Bourlier Cornice & Roofing Co., U. S. D. C., W. D. Ky., 133 Fed. Rep. 958.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Walter C. Balderston, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Anna L. Quinlan**, otherwise known as **Amy Lathrop**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. JOHN J. O'BRIEN, 1339 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,970 Adm. 23-3t

R. Golden Donaldson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward McMahon, Deceased.
No. 12,858. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Ellen McMahon, and summons having been duly issued against Joseph Patrick McMahon and Thomas McMahon, and returned not be found, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Joseph Patrick McMahon and Thomas McMahon**, and to all others concerned, to appear in said court on **Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Nelson Wilson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Otis B. Bullard, Deceased.
No. 12,965. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration, with will annexed, on said estate, by Henry M. Cutler, it is ordered, this 6th day of June, A. D. 1905, that notice be and hereby is given to the **unknown next of kin**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

Douglass & Douglass, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Baldy Ashbourne Capehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of June, 1905. FANNY CAPEHART, care of Douglass & Douglass, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,851. Adm. 23-3t

Julius I. Peyser and Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Herman Baumgarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. ADA BAUMGARTEN, 466 Mass. ave. N. W., ARTHUR BAUMGARTEN, 414 10th st. N. W. Attest: JAMES TANNFR, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,977. Administration. 23-3t

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Bernard H. Johnston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of June, 1905. JAMES M. JOHNSTON, WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 23-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Norton Frank**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, A. D. 1905. EMMA R. ELIAS, care Geo. F. Williams, 606 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,954. Administration. 23-3t

F. D. McKenney and J. S. Flannery, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of New York and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice L. Cilley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of June, 1905. HARRIET C. RUSSELL, 21 West 11th st., New York City; EMMA CILLEY, 1520 I st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,913. Adm. 23-3t

Legal Notices.

G. Percy McGlue, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel M. Ryan, Deceased.
No. 12,922. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **James Ryan**, it is ordered this 8th day of June, A. D. 1905, that notice be and is hereby given to **Johanna Carew**, of Tipperary, Ireland, and to all others concerned, to appear in said court on **Friday, the 21st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia Clerk of the Probate Court. 23-3t

Sydney F. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna J. King, Deceased.
No. 12,926. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by A. Virginia Chessman, it is ordered this 7th day of June, A. D. 1905, that notice be and hereby is given to **Joseph Plankington, Jesse Plankington, Rebecca Plankington, and Gertrude Plankington**, of Netawaka, Kansas, and **Horace Chessman**, of Philadelphia, Pa., and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Robert E. Mattingly, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aletia Ferguson**, late of the State of Pennsylvania, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. MARK FERGUSON, 5154 Brown st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,899. Administration. 23-3t

W. C. Prentiss and C. S. Muir, Solicitors

In the Supreme Court of the District of Columbia.

William H. Saunders et al. v. William Holmead et al.,
Equity, No. 23,552. Docket 53.

Upon consideration of the sixth report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating that they have received from Thomas E. Jarrell an offer of twenty-five cents ($0.25) per square foot, all cash, for the west twenty (20) feet front, by the depth thereof, of lot numbered thirty-two (32) in block thirty-one (31) of the Washington Loan and Trust Company's subdivision in Petworth addition to the city of Washington, District of Columbia, it is by the court, this 7th day of June, 1905, adjudged, ordered, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to the contrary be shown on or before the **30th day of June, 1905**. Provided a copy of this order shall be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

Digitized by Google

Legal Notices

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth Behrens Kenny, Deceased.
No. 12,832. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by John W. Pilling, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Hannah Williams and the unknown next of kin of Elizabeth Behrens Kenny**, and to all others concerned, to appear in said court on **Tuesday, the 18th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Francis M. Moore**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. DAVID MOORE, 717 14th st. N. W.; WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,924. Administration. 23-3t

Irwin B. Linton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Sarah Guffin, Deceased.
No. 12,938. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Susan A. Guffin and Harriet C. Guffin, executrixes, it is ordered this 8th day of June, A. D. 1905, that notice be and hereby is given to **Richard Guffin**, of Columbus, Ohio, and the **unknown heirs of James Austin Guffin, deceased**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

L. Cabell Williamson, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Wilson Gregory, Deceased.
Administration No. 12,948.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, by Francis G. Gregory, it is ordered, this 8th day of June, A. D. 1905, that notice be and hereby is given to **Anna Gregory Carl, Margaret Gregory Taylor, William H. Gregory, Mary Gordon, Phœbe Oliver, Edward F. Brooks. Mary Brooks, Lula Brooks, Katie Brooks, Webster Stauffer, Mary Myrtle Ranck, Walter Stauffer, Drew Stauffer, Mabel Brooks**, and all others concerned, to appear in said court on the **19th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 23-3t

Legal Notices.

Wm. L. Pollard and Mason N. Richardson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frank Marrow**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. WILLIAM L. POLLARD, 609 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,951. Administration. 23-3t

Smith Thompson, Jr., Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of Allegheny City, Pa., has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Elbert Clagett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1905. LAVINIA E. CLAGETT, care Smith Thompson, Jr., Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,953. Administration. 23-3t

John Paul Earnest, Solicitor
In the Supreme Court of the District of Columbia.
Champe B. Thornton et al. v. Jennie T. Powers et al.
Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, herein filed, it is, this 2d day of June, A. D. 1905, ordered by the court that said trustee be, and he is hereby, authorized to accept the offer of Carl C. King, to purchase for $1,000 lot 8 in block 8, and also the offer of Harry C. Fisk to purchase for $600 lot 1 in block 13, both of said lots being in Grammer's addition to Takoma Park, recorded in county book 7, page 112, in the office of the surveyor of the District of Columbia, and included in the decree of sale in the above-entitled cause, and further that said sales of said lots be ratified and confirmed by the court unless cause to the contrary be shown on or before the **2d day of July, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

W. H. Soles, Solicitor
In the Supreme Court of the District of Columbia.
George Winsmore v. Samuel G. Thompson et al.
Equity, No. 25,323. Docket No. 56.

The object of this suit is to remove cloud on complainant's title to east one-half of lot 23 in Wright & Cox's subdivision of part of Pleasant Plains, in the District of Columbia. On motion of the complainant, it is, this 5th day of June, A. D. 1905, ordered that the defendant, **Samuel G. Thompson**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

R. E. Pairo and John J. Brosnan, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William G. Phillips**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. CHARLOTTE E. PHILLIPS, 1732 Connecticut Ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,957 Administration. 23-3t

Digitized by Google

Legal Notices.

SECOND INSERTION.

T. Percy Myers, Attorney
Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William J. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. ANDREW J. MILLER, in care of T. Percy Myers, atty., 486 La. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,950. Admn. 22-3t

F. Sprigg Perry, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mrs. Emily V. Sproston, Deceased.
No. 12,934. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William G. Sproston, it is ordered this 1st day of June, A. D. 1905, that notice be and hereby is given to **Legare Phenix and certain unknown next of kin of the decedent**, and to all others concerned, to appear in said court on **Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **America E. Towner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **31st day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. LAURA E. TOWNER, 1105 O st. N. W. Attest: WM. C. TARLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,955. Administration. 22-3t

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Llewellyn G. Estes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. L. W. ESTES, Corcoran Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,740. Administration. 22-3t

Alexander H. Bell, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Philip Barry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of May, 1905. DANIEL P. McCARTHY, 610 Penn. ave. N. W.; FRANK P. MADIGAN, 1206 Va. Ave. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,947. Administration. 22-3t

Legal Notices.

Thos. Walker, Attorney
Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Diana Walker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of January, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. THOMAS WALKER, 506 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,335. Administration. 22-3t

Thomas Walker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of John Johnson, Deceased.
No. 12,782. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Walter G. Bradley, it is ordered this 29th day of May, A. D. 1905, that notice be and hereby is given to **Dennis Johnson**, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

E. S. Theall, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Bayne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1905. MAE A. BAYNE, 1141 Connecticut ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,946. Administration. 22-3t

Blair & Thom, Solicitors
In the Supreme Court of the District of Columbia.

Josephine Fant et al., Complainants, v. Hamilton G. Fant et al., Defendants. In Equity, No. 25,187.

The object of this suit is to have a trustee appointed to take possession of a certain fund, namely, $35,410, now in the registry of the court, being the proceeds of a sale to the District of Columbia of lot two (2) in square four hundred eighty-nine (489), and to hold the said fund in the same manner and for the same persons, and in the same interests that they would have had in said lot 2 in square 489. On motion of the complainants, it is, this 29th day of May, A. D. 1905, ordered that the defendants, **Hamilton G. Fant, Emma Fant, Clarence A. Fant, Katherine Fant, Paul E. Fant, Emily Reardon, Elise O'Dunne, Josephine Reardon, Emily Reardon, Addie Reardon, Frances Kenney, Frances Kenney, Junior, Josephine Fant, Elizabeth Smucker, Elizabeth Smucker, Junior, Josephine Smucker, Marie Smucker, Joseph Hellen, Mamie Hellen, Johnson Hellen, Mary Hellen, Johnson Hellen, Junior, Mary Hellen, Charles Hellen, Clarence C. Hellen, and Mary E. Moses**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for each of three successive weeks before said rule day in The Washington Law Reporter and The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, by F. E. Cunningham, Asst. Clerk. 22-3t

Digitized by Google

Legal Notices.

J. J. Darlington, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louisa Hagner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ALEXANDER B. HAGNER, 1818 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,806. Administration. 22-3t

Hamilton & Colbert, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth S. C. Israel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of May, 1905. HUGH L. BOND, Jr., Md. Trust Building, Balto., Md.; ALFRED Z. HARTMAN, 1210 Bolton st., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,823. Admr. 22-3t

Hallam & Hallam, Solicitors
In the Supreme Court of the District of Columbia.
Calvin Tibbs, Complainant, v. James Bennett's Unknown Heirs, Defendants.
Equity. No. 25,219. Doc. No. 56.

The object of this suit is to declare the title of complainant to lot two (2) in square five hundred and ninety-nine (599), in the city of Washington, District of Columbia, to be good in fee simple by adverse possession. On motion of the complainant, it is this 29th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, devisees, and alienees of James Bennett, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default.** THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. j 2-9, j 7-14, a 4-11

Chas. E. Riordon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **David Logan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of May, 1905. HANNAH Mc. LOGAN, 1407 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,905. Administration. 22-3t

THIRD INSERTION.

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William Wallace Kirby**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. L. CABELL WILLIAMSON, 458 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,936. Admn. 21-3t

Legal Notices.

Filed May 10, 1905.—J. R. Young, Clerk.
John R. Shields, Solicitor
In the Supreme Court of the District of Columbia.
Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

Elbert S. Maloney, Solicitor
In the Supreme Court of the District of Columbia.
Emma V. Wharton v. Robert L. Wharton and Bertha M. Miller. Equity, No. 25,808.

The object of this suit is to obtain an absolute divorce from the defendant, Robert L. Wharton, on the ground of adultery. On the motion of the complainant, it is, this 17th day of May, A. D. 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

Alexander H. Bell, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John A. Murphy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **25th day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. CATHERINE MURPHY, 350 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,940. Administration. 21-3t

Mason N. Richardson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Frances W. Gager**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 12th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of May, 1905. ELLA Y. BRAYLEY, by Mason N. Richardson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,239. Administration. 21-3t

Digitized by Google

Legal Notices.

Perri W. Frisby, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George R. Chapman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1905. JOHN C. NORWOOD, 1632 Superior st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,699. Administration. 21-3t

---

J. A. Maedel, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Enders**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. JOHN ENDERS, 1583 Monadnock Blk., Chicago, Ill. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,920. Administration. 21-3t

---

Thomas L. Jones, Solicitor
In the Supreme Court of the District of Columbia.
Walter Nervis v. Sarah Nervis.
No. 23,062. Equity Docket No. 52.

The object of this suit is to obtain a divorce from defendant on the ground of desertion and adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Bee. On motion of complainant, by his attorney, Thomas L. Jones, it is this 3d day of August, A. D. 1904, ordered that the defendant cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 21-3t

---

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles A. Burgess**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. GRACE A. RYON, 328 D st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,925. Administration. 21-3t

---

John E. Laskey and Ralph Given, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration, c. t. a., on the estate of **Mary McKenney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **22d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1905. MARY J. COOPER, 701 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,198. Administration. 21-3t

Legal Notices.

John Ridout, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Benjamin F. Hall**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 23d day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of May, 1905. FRANK C. McCATHRAN, administrator, by John Ridout, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,225. Administration. 21-3t

---

Joseph A. Burkart, Solicitor
In the Supreme Court of the District of Columbia.
George M. Strachan et al. v. Thaddeus S. Strachan et al. Equity, No. 25,266.

The object of this suit is to have partition by sale of sublot No. 40, in square number 176, known as premises number 1914 New Hampshire avenue N. W., Washington, D. C. On motion of the complainants, it is, this 25th day of May, 1905, ordered that the defendants, **Thaddeus S. Strachan** and **Florence M. Strachan**, cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, the court being satisfied that it is unnecessary to publish the same in any other paper. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-3t

---

S. Duncan Bradley, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of **Ysidora B. M. Dodge**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 29th day of June, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of May, 1905. HARRISON H. DODGE, 1219 32d st. N. W.; JOSEPH H. BRADLEY, 1219 32d st. N. W., by S. Duncan Bradley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,097. Administration. 21-3t

---

J. S. Barker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth Bate, Deceased.
No. 12,907. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Zebina Moses**, of Washington, D. C., it is ordered, this 25th day of May, A. D. 1905, that notice be and hereby is given to **Maude Sorby** and **Clifton Sorby**, both of Craven, Assiniboia, N. W. T., Canada, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Leader, published at Regina, N. W. T., Canada, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Digitized by Google

Legal Notices.

William H. Linkins, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Walter C. Johnson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of May, A. D. 1906,** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1905. KATHERINE J. FALCONER, 1502 13th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,930. Administration. 21-3t

J. J. O'Connell, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Maguire,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1905. DENNIS C. SHEA, 101 I street N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,846. Administration. 21-3t

Edward A. Newman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Helge G. Forsberg,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of May, 1905. GUSTAVE W. FORSBERG, 8th and Water sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,908. Administration. 21-3t

Lester & Price, Solicitors
In the Supreme Court of the District of Columbia.
Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 23 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 23 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry,** if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; june 2-9; july 7-14; aug. 4-11

Legal Notices.

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Evalyn Doughty, Deceased.
No. 12,906. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters of administration, with will annexed, on said estate, by Cavour O. Bohrer, it is ordered, this 22d day of May, A. D. 1905, that notice be and hereby is given to **Mrs. Hannah Doughty,** and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

Charles T. Hendler, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Susan Turner, Deceased.
No. 12,723. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harry J. McGowan, it is ordered this 23d day of May, A. D. 1905, that notice be and hereby is given to **Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Eberhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills,** and the unknown heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Monday, the 26th day of June, A. D. 1905, at 10 o'clock, A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-3t

FOURTH INSERTION.

B. F. Leighton and C. Clinton James, Attorneys
In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In re the Estate of Loraine Lipphard, Deceased.
No. 12,129 Admn. Docket 32.

It appearing to the satisfaction of the court that the notification of the trial of the issues relating to the validity of the paper writing bearing date the 27th day of April, A. D. 1898, purporting to be the last will and testament of Loraine Lipphard, deceased, has been, as to the following persons, to wit, William A. Lipphard, Alice Anderson, Thomas A. Anderson, Edward J. Pyle, and John Lipphard, returned "not to be found," it is this 15th day of May, A. D. 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial on the **15th day of June, next;** and that a copy of this order, and of the issues heretofore framed, shall be published twice a week for four weeks in The Washington Post and once a week for four weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: James Tanner, Register of Wills.

ISSUES.

First. Was the said paper writing, dated April 27th, 1898, the last will and testament of the said Loraine Lipphard? Second. Was the said paper writing, dated April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, executed and attested in due form as required by law? Third. At the time of the execution by the said Loraine Lipphard, of said paper writing, dated April 27th, 1898, as her last will and testament, was the said Loraine Lipphard of sound and disposing mind, and capable of executing a valid deed or contract? Fourth. Was the said paper writing, bearing date April 27th, 1898, purporting to be the last will and testament of the said Loraine Lipphard, deceased, procured by the fraud or undue influence practiced upon her by any person or persons? Fifth. Was the signature of said Loraine Lipphard, to said paper writing, procured by force exercised upon her by any person or persons? 20-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 24

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JUNE 16, 1905

CONTENTS.

Editorial 369
Amendment of Common Law Rule No. 2 relating to attorneys 370
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
James W. Whelpley et al., appellants, v. Samuel Ross 371
Cecilia M. Coughlin, plaintiff in error, v. The District of Columbia 376
Legal Notices 379

DECISIONS BY THE COURT OF APPEALS THIS WEEK.

License Taxes—Master Bricklayers Not "Building Contractors."

In Wilson v. District of Columbia, the question involved was whether a contracting bricklayer is a "building contractor" within the meaning of the provision of the license law imposing a license tax of $25 upon "building and other contractors." The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that he is not, and therefore reverses a judgment of the Police Court convicting the defendant of a violation of the law in failing to pay the tax. The proceeding was a test case to determine the question of the liability of contracting bricklayers to the payment of the tax. In the prior case of Chapman v. District of Columbia, the Court of Appeals held that the term "other contractors" in the statute was too indefinite to be enforced.

Equity—Contempt Proceeding for Violation of Injunction—Failure to Give Undertaking.

In Drew et al. v. Hogan et al., the appeal was from an order adjudging the appellants guilty of a contempt of court in disobeying an injunction. It appeared that the complainants in the proceeding had failed to give an undertaking, as required by Equity Rule 42 of the Supreme Court of the District, before the issue of the injunction, the terms of which it was alleged had been disobeyed by the appellants. For this reason, without passing upon any other question in the case, the Court of Appeals, in an opinion by Mr. Justice Duell, holds that the injunction was inoperative. The order of the court below was therefore reversed and the cause remanded for further proceedings in accordance with the opinion.

Treasury Draft; Lien of Attorneys; Service by Publication.

In Jones v. Rutherford, a question of considerable importance to attorneys prosecuting claims against the United States was involved. That question was, whether a Treasury draft, issued and about to be delivered, is such a species of property as will justify service by publication in a litigation instituted to establish the lien of the attorney therein for his services. The Court of Appeals, in an opinion by Mr. Justice Morris, which affirms the ruling of the court below, holds that such a draft is "personal property within the District," within the meaning of section 105 of the District Code, authorizing service by publication upon non-residents in suits for the enforcement of "liens against real or personal property within the District."

Bankruptcy; Suit by Trustee to Enjoin Payment of Treasury Draft.

In Bryan v. Curtis, the suit was by a trustee in bankruptcy to enjoin the Secretary of the Treasury from paying over to a foreign administratrix moneys appropriated by Congress as indemnity for the destruction of certain property. The Secretary of the Treasury appeared and demurred to the bill, and the administratrix appeared specially to object to the jurisdiction of the court on the ground that she was a non-resident and entitled to be sued at her place of residence. The trial court sustained the demurrer filed by the Secretary of the Treasury and dismissed the bill. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses this ruling, holding that the case was not in proper shape for dismissal, inasmuch as the real party in interest, the administratrix, had only appeared specially, and the Secretary had no real interest in the controversy. The court intimates that a preliminary injunction might properly be granted to preserve the status quo until the administratrix could be brought before the court by publication or otherwise.

Deeds; Mental Capacity of Grantor.

In Critchfield et al. v. Easterday, the suit was brought to set aside a deed of trust and deed in fee on the ground that, at the time of their execution, the grantor was mentally incompetent. The Court of Appeals, in an opinion by Mr. Justice Morris, affirms the decree of the court below, which held that the evidence showed that the grantor, though mentally infirm, had

Digitized by Google

frequent lucid intervals, and that the deeds in question were executed by her during such lucid periods, and also that it appeared the proceeds of the deed of trust were in large part used for her benefit.

Wills; Construction of Bequest; Held to Give Only Life Estate.

In Vogt et al. v. Vogt et al., the suit was brought to construe a will. The principal question was whether a certain bequest gave an absolute estate in personalty to a son of the testator, or only a life estate, with remainder to his children. On this question the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, held that the son took only a life estate, with remainder to his children. The decree of the court below was therefore reversed.

Admiralty; Salvage.

In the case of James Clark Company v. Ferryboat "Columbia," the proceeding was in admiralty to recover salvage for saving the ferryboat from destruction by fire. The Court of Appeals, in an opinion by Mr. Justice Duell, in which humorous reference is made to the conflicting character of the testimony, reverses the decree of the court below, on the ground that the allowance to the libellant should have been of the sum of $200 instead of $100, and directs the entry of a decree for the larger amount.

Vagrancy; Evidence Insufficient to Sustain Conviction.

In Fields v. District of Columbia, the plaintiff in error was convicted in the Police Court upon an information charging him with vagrancy. It appeared that, in the daytime, he drove a grocery wagon, and at night was accustomed to play a piano in one of the houses in the "Division." The Court of Appeals, in an opinion by Mr. Justice Morris, holds the evidence insufficient to support a conviction, and therefore reverses the judgment.

Criminal Law; Larceny; Drunkenness as Defense.

In Ryan v. United States, the appellant was convicted of the larceny of certain trunks. The trial court excluded evidence offered in his behalf, that he was drunk at the time he committed the offense. It appeared, however, that he retained the property after he became sober, and the evidence was not of such a character as to show that he was so drunk as to be without volition. The Court of Appeals affirms the judgment, in an opinion by Mr. Chief Justice Shepard.

Smoke Law; Government Official Liable for Violation of.

In Palmer v. District of Columbia, the question involved was as to whether the plaintiff in error, a Government official, was liable for a violation of the anti-smoke law, so called. He was convicted in the Police Court and fined, and the Court of Appeals, in an opinion by Mr. Justice Morris, affirms the judgment. The court construes the law as applicable to Government buildings as well as to private institutions, and says that the fact that a person charged with its violation is a Government official does not relieve him from its penalties. Mr. Chief Justice Shepard dissents, holding that the law does not apply to public buildings of the United States located in this District.

In Jones v. Starr (No. 301) and In re Application of Mark Cross Company (No. 303), decisions of the Commissioner of Patents were affirmed, in opinions by Mr. Justice Duell.

Amendment of Common Law Rule No. 2, Relating to Attorneys.

The following amendment to Common Law Rule No. 2, of the Supreme Court of the District of Columbia, was promulgated by the court in General Term, on June 15, 1905:

The following is adopted as a substitute for section 6 of the Common Law Rule No. 2:

6. Dishonesty, misconduct in office, conviction of crime involving moral turpitude, or unprofessional conduct involving moral turpitude, shall be cause for suspending or removing any attorney from the office of member of the bar of this court.

7. Whenever complaint in writing shall be presented to this court in General Term, charging a member of the bar of the court with any of the causes for suspension or removal, and setting forth the facts upon which the accusation is grounded, such complaint shall be forthwith referred to a standing committee of five members of the bar of the court, to be known as the Committee on Grievances, to be appointed by the court, and who shall serve for one year and until their successors are appointed; and it shall be the duty of said committee forthwith to investigate such complaint and to report thereon to the court, stating whether the committee deem the facts, as ascertained by them, to be insufficient to support such complaint or deem it proper upon such facts that the member so charged should be called upon to answer.

8. In the latter event a charge shall be formulated by the committee and submitted with such report, and if the court shall so order, shall be filed with the clerk of the court. Whereupon the following proceedings shall be had: A copy of the charge, certified by the clerk, together with a notification that at a time to be designated therein, the court will proceed to hear and determine the same, shall be forthwith served upon such member by the marshal, or otherwise as the court may direct in case of inability of the marshal to serve the same.

Said committee, by one or more of its members, shall present and prosecute such charges, and the same shall be tried. Upon all hearings subsequent to the filing thereof the respondent

Digitized by Google

shall be entitled to be present, to be heard by himself or counsel, and upon the trial to present evidence in his defense.

If upon the trial the court shall find the respondent guilty of the charge, he may be removed from office and his name stricken from the roll of attorneys and counsellors of the court, or he may be suspended from practice before the court during such time as the court may deem proper.

9. If, at any time, the conduct of a member of the bar of the court, in any judicial proceeding therein, with which proceeding such member was or is connected as counsel or otherwise, shall appear to the court at general or special term to be a proper subject of inquiry, then and in such case the matter may be referred by such court to the said committee on grievances, with directions to investigate the same and to report thereon, and if the said committee shall recommend that such member be called upon to answer in respect of his said conduct, the committee shall formulate against such member such charge as the circumstances may require and submit the same to the court with their said report to be dealt with as in section 8 provided.

10. It shall furthermore be the duty of said committee to inquire into all cases of alleged misconduct of members of the bar, which shall otherwise come to their notice and which, if true, would constitute cause for suspension or removal as above defined; and if upon such inquiry the committee shall in any instance deem the case a proper one for action by the court, the committee shall so report to the court and shall formulate such charge of misbehavior as the circumstances may require and submit the same to the court with their report, to be dealt with as in section 8 provided.

11. If service can not be had upon an accused member of the bar, of a charge preferred against him under the provisions of the foregoing sections, the court may, in its discretion, order that such member shall be suspended from practice until such service shall be had, and in the meantime no paper signed by him as attorney and relating to any legal proceeding in the court shall be recorded or filed in the clerk's office.

12. Nothing herein shall be construed to deprive the court of power, upon its own initiative, to direct the preferring of charges against a member of the bar, and the trial thereof, or of the power to appoint prosecutors to present and prosecute the same, or to deprive the court of any other power in the premises which it may possess.

By an order of the court in general term, passed on the same day, the following named gentlemen were appointed as the Committee on Grievances provided for by section 7: Mr. Wm. F. Mattingly, chairman; Mr. J. J. Darlington, Mr. Henry P. Blair, Mr. Alex. H. Bell, and Mr. Adolph A. Hoehling, Jr.

Husband and Wife—Gifts.—The fact that the husband handed to his wife all his earnings from week to week, from which to pay the family expenses, does not constitute a gift to the wife of any surplus over such expenses.—*Fretz* v. *Roth* (N. J.), 59 Atl. Rep. 676.

Court of Appeals of the District of Columbia.

JAMES W. WHELPLEY ET AL., APPELLANTS,
v.
SAMUEL ROSS.

EQUITY; SEALED INSTRUMENTS; SUIT BY UNDISCLOSED PRINCIPAL; BUILDING ASSOCIATIONS; LOANS TO SHAREHOLDERS; USURY; MATURITY OF STOCK.

1. The rule of the common law, that an undisclosed principal can not maintain a suit upon a sealed instrument, is not applicable in equity.
2. M, acting in behalf of R, but without disclosing his principal, borrowed a certain sum from a building association, and, to secure a bond given by him to the association, executed a deed of trust of real estate owned by R, but the legal title to which was vested in M. *Held*, that upon performance of the condition of the bond R was entitled to sue in equity to procure the release of the property from the deed of trust.
3. When the promise to pay a sum above legal interest depends upon a contingency, and not upon the happening of a certain event, the loan is not usurious.
4. An agreement between a building and loan association and a borrowing shareholder, by which it appeared that a bond given by the latter should be regarded as satisfied and be entitled to a release of the deed of trust securing the same whenever the stock in his name should, by payments by the holder and profits accruing from the operations of the association (which profits were, of course, contingent), become of the full value of $200, held not upon its face to involve a usurious transaction.
5. The by-laws of a building association provided that when shares of stock in a series should have reached the full value of $200 each, or loans to the full amount of every share had been made, the shares should all be paid off and the series discharged. It appeared that all shareholders in a given series had been paid off except those in the name of a borrowing shareholder. *Held*, that inasmuch as the profits of the association were applicable equally to the shares of borrowing as well as non-borrowing shareholders, and all the shares must mature at the same time, the shares held by him must be regarded as having matured.
6. *Held*, that the complainant in the present case was entitled to have a release of his property from the deed of trust, but not in this suit to a repayment to him of the money claimed by him to have been overpaid.

No. 1461. Decided March 21, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,253, in suit to procure release of deed of trust, etc. Modified and affirmed.

Mr. O. B. Hallam and *Mr. W. M. Hallam* for the appellants.

Mr. E. H. Thomas and *Mr. F. H. Stephens* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a controversy between a so-called building association and one known as a "borrowing stockholder."

A number of persons, whose names are not given, combined in this District to form a voluntary unincorporated association known and designated as the Eastern Building and Loan Association, with the nine appellants first above mentioned as its directors, the purpose of which was, according to the usual programme of building associations, and according to the specification in the first article of its by-laws, "to receive from and to loan to stockholders its funds, subject to the by-laws."

Digitized by Google

On March 13, 1893, one George W. Montgomery, an employee in the office of the appellee Ross, and conceding to have been acting as an agent for the latter in the transaction, borrowed from the association the sum of $2,200, having for the purpose become a stockholder to the extent of eleven shares of stock, for which he subscribed, and which were issued to him at the time. It would appear that the money was put up at auction and that Montgomery became the highest bidder therefor by an offer to pay a premium of 70 cents on each sum of $100, or on each share of stock, which practically amounted to the same thing. For the repayment of the amount he executed and delivered to the association a bond under seal, conditioned for the payment in each month of $2.70 on each share of stock held by him, and all fines and forfeitures that might be incurred by him under the "constitution" of the association, until "full settlement should be made, as provided in such constitution;" and to secure this bond he gave a deed of trust by way of mortgage on real estate standing in his name, although really owned by the appellee Ross, and which real estate adjoined the city of Washington. The payment of $2.70 to be made monthly is stated to be $1 for principal, $1 for interest, and 70 cents as premium, and the whole payment to be made by the appellee on his eleven shares of stock was $29.70, which he continued to pay from the first Wednesday of March, 1893, to and including the first Wednesday of July, 1903, a period of 125 months, during which the whole amount paid by him would seem to have amounted to the sum of $3,712.50.

What is called the "constitution" of the association would seem to have been no more than a series of by-laws, and which in fact are designated as by-laws, of which thirty-six are enumerated in the record. These provide for the mode of operation of the association, which is not too clearly set forth; for very much is left to inference, possibly because the mode of operation of such association was generally well known. So far as we are informed by the record the principal features, so far as they concern the present case, were these:

The members of the association were designated as stockholders, and it would seem that any one could at any time become a stockholder, either for the purpose of borrowing money from it, or for the purpose of investing his money at a profit; and it does not appear that there was any limitation upon the amount of stock which one might acquire further than the amount for which he desired to pay, if he was an investor, or than the amount which he desired to borrow, if he proposed to become a borrower. The theory appears to have been that the so-called stock, when subscribed for—for no stock in the ordinary sense of the term seems to have been ever issued—represented the measure of the payments which the stockholders desired to make for their investment; that, if they desired merely to invest, they paid into the association at the rate of $1 a month for each share, and no other payment was required of them, except for fines and penalties, if any they should incur, and that they were required to pay only until by such payments and by the profits of the association from loans and from fines and penalties the stock should become of the full value of $200 a share, when the money was to be divided and the association dissolved. Or rather the organization was planned to be of indefinite duration by the issue, if we may so call it, of successive series of stock, of which each series constituted an organization in itself, independent of every other series, although the same persons might hold stock in the different series or in all the series. Each series was to be closed and dissolved when the stock in it became of the full value of $200 a share, and the limit of stock in each series was the amount that should be subscribed for within six months.

The association seems to have been organized in the year 1889, and in the year 1903, when these proceedings were instituted, there had been twenty-six series of stock issued. Of these Ross, through his agent Montgomery, was in the ninth, and at the time of the institution of the suit Montgomery was the only stockholder and his stock the only stock outstanding in that series. All the other stockholders had been settled with. At least, the answer of the defendants avers that all the "non-borrowing" stockholders in that series, as well as in several other series, had "been paid off in full."

Section 17 of the by-laws provides that each stockholder should pay into the association one dollar each month for each share of stock held by him during the continuance of the series to which his stock belonged. And, as we have stated, this was all the payment that was required of investing or non-borrowing stockholders, other than possible fines and penalties.

Section 30 provided that stockholders might withdraw at any time, after giving one month's notice; and if there was money in the treasury available for the purpose, should receive what is called the withdrawal value of their stock, which was the aggregate amount of the periodical payments made by them, and sixty (60) per centum of the profit on each share of stock in the series, as reported in the last previous semi-annual statement.

Section 33 provided that when every share of stock in a series should have reached the full value of $200, or whenever loans to the full value of every share of stock should have been made, each stockholder should receive the sum of $200 in money for each share of stock held by him; or, in case a loan should have been granted to him, the bond and mortgage should be satisfied or released, and the series should be dissolved.

Three sections provided specifically in regard to loans. They were sections 19, 20, and 26.

Section 19 provided that, when there was more than $200 in the treasury not subject to withdrawal, the board of directors should offer it at public auction to the highest bidder; who either was then or should thereupon become a stockholder in order to be entitled to receive the same, and who should have subscribed for one share of stock for each sum of $200 required.

Section 20 provided that the borrower, in addition to the sum of $1 a month required to be paid by all stockholders on each share of stock, should pay, also, 6 per centum per annum interest on the amount of the loan, being $1 a month on each share of stock or sum of $200, and also

Digitized by Google

the rate of premium on each share per month for priority of loan.

Section 26 provided that borrowing stockholders might repay their loans and either continue their stock in the association or receive the withdrawal value thereof if they desired to withdraw it, in which event it should revert to the association.

Under these circumstances the appellee Ross on October 21, 1903, filed his bill in equity in the Supreme Court of the District against the board of directors of the association, Montgomery, and the trustees under the deed of trust given to secure the loan, and in it, after stating the loan and the execution of the bond and deed of trust, he alleged that, by a just accounting, he had overpaid his indebtedness on the loan by the sum of $867.86; that the transaction was usurious; that Montgomery acted in it as his (Ross') agent; that the property belonged to the complainant and Montgomery had no beneficial interest in it; that he (the complainant) had demanded from the association a release of the deed of trust, which was refused unless a further sum, claimed to be due under the loan, was paid; and that the association threatened to order a sale of the property for failure to pay the further dues demanded. And he prayed for a repayment of the amount claimed by him to have been overpaid, for a cancellation of the bond, and a release of the deed of trust.

The board of directors of the association and the two trustees under the deed of trust joined in one answer, in which they admitted the transaction between Montgomery and the association, but averred that it was not a loan, but an advance upon his stock; and that payments for two or three years more would be required to make his stock equal to $200 a share, and to entitle him to a release of the deed of trust. In the answer there is also this averment, which is deemed to be important, and which therefore we transcribe in full:

"These defendants say, that, while the word loan is used in the by-laws, the transaction hereinbefore referred to was really an advance on the said several shares of stock to the full value thereof, and the said association was organized and the said transaction had on the faith of the long settled law in this District, as determined by the highest courts thereof, that such transactions were fully legitimate and authorized by law. Said association consists of and has always consisted of, from time to time, a large and shifting number of stockholders or members. It has now reached its 26th series, and the first six series and the 8th, 10th, 11th, and 12th series have been paid off and settled in full, and all the non-borrowing stockholders in the 7th, 9th, and 13th to 19th series, inclusive, have been paid off in full; and all this while the said Montgomery was a member; and the amount received from him as interest and premium went into and was computed as part of the profits and value of the shares of stock in each of said series. Those series were settled by reason of the accumulation of funds for which no bids were made and which the association was therefore unable to loan or advance to stockholders, and the said Montgomery and the plaintiff were well aware of this condition of affairs and of these retirements of stock so made, so that they are estopped to claim any refund for any overpayment, whatever may be their rights as to a refusal to make further payments."

Montgomery answered, substantially admitting all the allegations of the complainant's bill, and consequently his own agency for Ross in the transaction and Ross' ownership of the property.

Instead of testimony a stipulation was entered into between the parties and filed in the cause, whereby it was agreed that certain facts should be taken as proved, and that the cause should be heard on the bill and answers and this stipulation so far as it modified the pleadings. The facts stated in the stipulation, which included as an exhibit annexed to it a copy of the constitution or by-laws of the association, were substantially those which have heretofore been mentioned. They included also the statement that neither the complainant nor Montgomery had any other connection with the association, or held any stock therein, other than the transaction which has been set forth. Included in the stipulation also was the fact that semi-annual statements had always been issued showing the value of the stock in the ninth series, and that in the statement of July 31, 1901, the value was shown to be $129.33 for each share.

The court rendered a decree, whereby the complainant was adjudged to recover the sum of $867.86 from the nine defendants, who constituted the board of directors; and it was ordered that the stock issued to Montgomery and the bond given by him should be cancelled, and that the deed of trust should be released by the trustees. From this decree all the defendants, except Montgomery, have appealed.

1. The first contention of the appellants under their assignments of error, is that the appellee, not being a party to the bond executed by Montgomery to the building association, is not entitled to maintain this suit, in view of the well-settled rule of the common law, applicable to instruments of writing under seal, although not, as it would seem, to simple contracts, that only the parties named or described in such sealed instruments, or those in privity with them, which undisclosed principals are not, are entitled to sue or liable to be sued thereon. But we think that this contention is untenable, for the reason that the rule, except in special or exceptional cases, is not applicable in equity.

As we understand it, the complainant in this case, although in the bill of complaint he prays for the cancellation of the bond given by Montgomery and of the stock issued to him, as by the structure of his bill he was probably compelled to do, is neither seeking to enforce that bond nor to rescind it, or to be relieved from its operation. If we regard that bond alone and as standing by itself, the complainant may be said to have no interest whatever in it. What he is interested in is to relieve his property from the operation of the deed of trust given thereon by Montgomery, upon the assumption that the purpose had been satisfied for which the deed of trust had been given—in other words, that the condition of the bond, which the deed of trust had been given to secure, had been fully performed. It is con-

Digitized by Google

ceded, and whether it is conceded or not, we must hold, under our decision in the case of the Loan Association v. Baker, 19 D. C. App. 1: 29 Wash. Law. Rep. 783, that, if the complainant, subsequently to the transaction between Montgomery and the building association, had received from Montgomery a deed of conveyance of the property, he would have been entitled to sue in equity to free the property from the incumbrance upon it, if in fact the liability secured had been discharged. The privity of estate would have entitled him to maintain such suit.

But it is argued that because he has no such conveyance he can not maintain the suit. The argument, we think, is without merit. Had it been necessary for the complainant for any reason to have recourse to a court of equity in a suit against Montgomery alone to establish in himself a resulting trust in the property standing in the name of Montgomery, it is beyond question that, upon such showing as is made in this record and especially upon the admission of Montgomery, he would be entitled to a decree for a conveyance to him, or to its equivalent, a decree establishing the title in himself under a resulting trust. Now, in the present case, Montgomery concedes the title to be in him, and no one controverts the fact that he is the true owner of the property. There is, therefore, no good reason why he should not be entitled to maintain this suit, which might perhaps be regarded as the consolidation of two equitable proceedings in one.

Three cases are cited in favor of the proposition that equity will not, any more than the common law, maintain a suit by an undisclosed principal to enforce the obligation of a sealed instrument. They are Briggs v. Partridge, 64 N. Y. 357; Barcherling v. Katz, 37 N. J. Eq. 156, and a case in the English Court of Chancery Appeals, In re Pickering's Claim, L. R. 6 Chan. App. 625. But we think that, upon examination, none of these cases will be found pertinent.

The case of Briggs v. Partridge was not a suit in equity, as counsel for the appellants mistakingly suppose, but a suit at common law, or rather a suit under the code practice of the State of New York, but still essentially a suit at common law, wherein, upon a contract in writing under seal for the sale of some land, the vendor sought to hold the undisclosed principal of the vendee, who was in fact only an agent, for the stipulated purchase money. The contract was executory, and the vendor was ready to execute it, but the vendee and his principal refused. It was held that the suit could not be maintained. Plainly this is no authority in the present case.

In the case of Barcherling v. Katz, 37 N. J. Eq. 156, there was a bond for the payment of money, wherein the nominal obligee was in fact the agent of an undisclosed principal, and the latter sought in a suit in equity to hold the obligor for a breach of the covenant, upon the sole ground that he had no remedy at common law by a suit in his own name; but this was plainly no sufficient ground for recourse to equity. The party had an adequate remedy at common law by a suit in the name of the agent to his own use. And even if he had not, it is no ground for the jurisdiction of equity that a party by his course of conduct may have precluded himself from a suit in his own name. Equity can only grant equitable relief in a case of equitable cognizance, and the mere disability of a party through his own deliberate action to sue at common law does not fall under any known head of equitable jurisprudence.

The case of In re Pickering's Claim, L. R. 6 Chan. App. 625, does not greatly aid the appellant's contention. The report of the case is rather meagre and unsatisfactory; but sufficient appears to show that it has no great bearing upon the present controversy. It may perhaps be described as a case of a common law claim incidentally injected into proceedings in equity. Two brothers had been in partnership and had separated. One of them formed a company for which he was agent; and the company subsequently became insolvent, and its affairs were wound up in the court of chancery. The other brother, in the mean time, had procured a valuable concession from a South American government and sold an interest in it to the brother who had organized the company, for a consideration, part of which was paid in cash at the time and part remained on credit. The sale took the form of an instrument of writing under seal executed by the two brothers as obligor and obligee, without any reference whatever to the company, although the obligor was in fact acting as agent for the company in the transaction. Upon the insolvency of the company the obligee sought to prove his brother's liability to him as a claim against the company. It was held that it could not be allowed. The liability was one at common law between the obligor and the obligee, who both acted in full knowledge of the situation; and the rule of the common law in regard to the enforcement of the claim was not changed by the fact that the affairs of the company had come into the control of a court of equity for the purpose of being wound up and settled. Moreover, the case does not hold that, if it had been shown that the company had recived the benefit of the transaction, it could not have been held, at least to the extent of the benefit. In other words, while there was a suit pending in equity, the claim presented was merely a claim at common law upon the bond. An analogous case would have presented here if the building association had sought to hold the complainant personally upon the bond given by Montgomery.

We are of opinion that the appellee was entitled to institute and maintain this suit, and that he is entitled to the relief which he prays if the proofs justify his allegations.

2. The principal question argued before us is the alleged usurious character of the transaction between Montgomery and the building association, by reason of which, it is alleged, the bond was rendered void which was secured by the deed of trust. But while it is true that the device of premiums, so-called, which was used in this case, has often been employed by the astute managers of building associations to cloak usurious transactions, and the courts have not hesitated, and our own court, among others, has not hesitated to declare these transactions void whenever it is shown that the device was, in fact, a scheme to evade the usury

Digitized by Google

laws, yet we do not find that on its face the transaction here involved was a usurious transaction, and there is not sufficient evidence in the record to show that it was in fact of that character. The transactions of building associations, so called, can be carried on without usury, and it does not in all cases necessarily follow that the law against usury is violated if a larger sum is reserved to be paid for a loan or for an advance, whichever it may be called, than the principal and interest of the amount advanced. In the case of Spain v. Hamilton, 1 Wall. 604, and Bedford v. Building Association, 181 U. S. 227, it was held by the Supreme Court of the United States that when the promise to pay a sum above legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious. Here the satisfaction of the loan would seem to have been made to depend upon a contingency, for the agreement would seem to have been that the bond should be regarded as satisfied whenever the stock in the name of Montgomery should by payments by the holder and profits accruing from the operations of the association become of the full value of $200 a share; and these profits, of course, were contingent.

But, as we have said, we need not determine this question, and we are not sure that there is sufficient evidence in the record to enable us to determine it. Nor does there appear to be any evidence upon which we would be enabled to determine the value of the so-called stock at any specified point of time. There are statements that at certain dates it was worth a certain sum, but there is no means of verifying the accuracy of these statements. We think that the case can be decided upon a different ground.

Section 33 of the by-laws of the association, to which reference has already been had, provides that when shares of stock in a series shall each have reached the full value of $200 a share, or whenever loans to the full amount of every share of stock shall have been made, the shares shall all be paid off and the series shall be dissolved. Now it is averred in the answer of the defendants that "all the non-borrowing stockholders in the ninth series," as well as in several other series, "have been paid off in full," and it is conceded in the statement annexed to the stipulation and made part of it, that Montgomery, with his eleven shares of stock, is the only remaining stockholder in that series. Now the allegation that the non-borrowing stockholders have all been paid off in full necessarily implied, under the circumstances of this case, that their stock had fully matured and had reached the full value of $200 a share. Necessarily, therefore, the time had come under the by-law cited when all the shares should be paid off and the series dissolved. For the dues being the same for all and the profits being proportionately divisible among all, the stock of all must mature at the same time. We can not infer from anything in the record before us that there might be different dates of maturity for different shares of stock. The scheme of the association seems to demand that all the stock shall mature at the same time. Now, if this be so, it is not apparent how the stock of the non-borrowing stockholders could have fully matured and not that of the borrowing stockholders. The dues for both classes are the same and the profits are equally applicable to both classes. The only difference between the two classes is that the non-borrowing class pays at the rate of $1 a month for each share of stock as dues, and the borrowing class, in addition to this payment of $1 a month as dues, pays also $1 a month as interest and 70 cents a month as premium. But this payment of $1.70 for interest and premium goes into the association as profit, not for the benefit of the non-borrowing class alone, but for the equal benefit of all the stockholders, borrowers and non-borrowers alike. Were it otherwise, were this profit of $1.70 a month to go exclusively to the non-borrowing stockholders, we should have to hold that the whole scheme was illegal and the device a bold effort to evade the laws against usury.

The conclusion here indicated seems to be confirmed by the fact, which is apparent on the record and not contested by any one, that, in the period of 125 months, which elapsed between the date of the transaction between Montgomery and the association and July 31, 1903, when the complainant demanded a settlement and ceased his payments, the complainant had paid back to the association, on account of the loan to him, the aggregate sum of $3,712.50, in the way of dues, interest, and premium; or, if we exclude premiums, as being in the nature of a bonus, the sum of $2,750, in the way of dues and interest—in either case considerably more than the $2,200 required to make the shares of stock of the full value set up by the by-laws.

We can not understand how, under the scheme of this association, the shares of one man alone, the only stockholder remaining in the series, can have only reached the value of $170 a share, when all the other stockholders have received their shares in full.

3. If it be assumed, as we think it must here be assumed, that the complainant has overpaid the amount of his loan, whether such overpayment be the result of mistake or of usury in the transaction, it does not follow that he is entitled in this suit to recover back the amount of the overpayment. There is nothing to show that the directors, against whom a personal decree has been rendered, are or were stockholders of the association. There is nothing to show that they have any money of the association in their hands, derived from the transactions of the ninth series of stock, or from any other series, or from any other source. But apart from all this, it is very clear to us that the complainant is estopped from recovering the amount of his overpayment, at all events in this suit. He is bound by the by-laws of the association of which he became a member. He is bound by the statements of the condition of the association which were made from time to time and to which he gave his tacit assent. Under these by-laws and in pursuance of these statements, the money paid into the association by him went to enhance the value of the stock of his associates and himself and was in great part paid out to his associates when they were settled with and withdrew from the association. Plainly, therefore, it would be inequitable to hold the association as now constituted for money which

Digitized by Google

was paid out to other persons with the knowledge and consent of the complainant.

It is our opinion that while the complainant is entitled to have his property relieved from the deed of trust and to have the bond given by Montgomery and the stock issued to him cancelled, he is not here entitled to have a repayment to him of the money which he claims to have overpaid, if any such overpayment there was, and that the decree appealed from should be modified to that extent. So modified, that decree will be affirmed.

The cause will be remanded to the Supreme Court of the District with directions to modify the decree rendered in the cause, in accordance with the opinion of this court, and for further proceedings therein according to law, if any such further proceedings are required in the premises, the costs of this court to be paid one-half by the appellants and one-half by the appellees.

Modified and affirmed as modified.

CECILIA M. COUGHLIN, PLAINTIFF IN ERROR,

v.

THE DISTRICT OF COLUMBIA.

SIDEWALKS; REGULATION FOR REMOVAL OF SNOW AND ICE THEREFROM IVALID.

The regulation promulgated by the Commissioners of the District on February 8, 1905, for the removal of snow and ice from the paved sidewalks of the District within what are called the fire limits, is void as being an illegal exercise of authority and unwarranted by any power conferred by Congress upon the Commissioners.

No. 1579. Decided March 21, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. Geo. E. Hamilton and *Mr. M. J. Colbert* for the plaintiff in error.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the defendant in error.

Mr. Justice MORRIS delivered the opinion of the Court:

This is understood to be a test case to determine the validity of a certain regulation made and promulgated by the Commissioners of the District of Columbia on February 8, 1905, for the removal of snow and ice from the paved sidewalks of the District within what are called the fire limits. The regulation is in the following words:

"The tenant or occupant of any building or lot of land, or in case there shall be no tenant or occupant, the owner of any building or lot of land fronting or abutting on any paved sidewalk within the fire limits of the District of Columbia, and in the case of any building or lot of land owned by any corporation, joint stock company, or syndicate, the superintendent, manager, or other person in charge or control of such building or lot of land, shall within the first four hours of daylight, after the ceasing to fall of any snow, cause the same to be removed from such sidewalk; and in case ice has formed upon such sidewalk, the tenant, occupant, owner, superintendent, manager, or other person in charge or control of such building or lot of land, as above set forth, shall, within the first four hours of daylight after the same has formed, cause the same to be sprinkled with ashes or some other suitable substance.

"Any violation of any of the provisions of this regulation shall subject the person so offending to a fine of not more than $5, or, in the default of the payment of such fine, to imprisonment in the workhouse of the District of Columbia for not more than five days."

The plaintiff in error is the owner of some vacant and unimproved lots in square 735, in the city of Washington, fronting on Second street southeast; and after a fall of snow on February 9, 1905, failed to remove such snow from the paved sidewalks in front of said lots, within the first four hours of daylight ensuing thereafter. For this failure she was arraigned in the Police Court, and adjudged to be guilty, and a fine of $5 was imposed. A writ of error has been sued out from this court to review the judgment.

The regulation cited is stated to have been copied from an an old municipal ordinance of the city of Washington; and authority for its resurrection and re-enactment by the Commissioners of the District is claimed to be found in the act of Congress of January 26, 1887, (24 Stat. 368), and in the joint resolution of Congress of February 26, 1892, (27 Stat. 394). But no such authority can reasonably be claimed under the act of 1887, which is specifically restricted to eleven distinct subjects of regulation, of which the removal of snow and ice from the streets of the District is not one. They have reference mainly to the orderly use of the streets by vehicles, droves of animals, or animals running at large, to the charges to be made by hackney carriages, and to the use and storage of inflammable materials. They look mainly to the maintenance of order on the public streets, and to the enactment of regulations, in the strictest sense of that word; and not to the imposition of any duty upon individual citizens.

The joint resolution of 1892 is considerably broader in its scope; and under it we have held as valid various regulations promulgated by the Commissioners. But it is very clear that even under this broad grant of authority, which empowers the Commissioners to make all such reasonable and usual police regulations, in addition to those already made under the act of 1887, as they might deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia, it is regulation, not legislation, that is authorized; the reasonable regulation of the exercise of right, not the imposition of a duty; the usual police regulation for the maintenance of public order, not the levying of a tax either in the way of enforced labor or in the way of the purchase of materials for sprinkling the sidewalks. Whatever power the legislature itself may have in the premises, certainly it is not to be presumed to have granted such plenary authority as is here claimed under the joint resolution of 1892.

That various municipalities may have exercised such power, as appears from various municipal ordinances collated in the brief on behalf of the appellee, is not to the point. Municipalities are usually vested with quasi-legislative powers, among them the sovereign power of

Digitized by Google

taxation and assessment, and from the fact that municipal ordinances are elsewhere to be found analogous to the so-called regulation here in question, it is not to be inferred that similar powers exist in the Commissioners of the District of Columbia. The Commissioners are not the municipality, but only the executive organs of it, and Congress has reserved to itself not only the power of legislation in the strict sense of the term, which it can not constitutionally delegate to anyone or to any body of men, but even the power of enacting municipal ordinances, such as are within the ordinary scope of the authority of incorporated municipalities. It has delegated to the Commissioners simply the power of making "police regulations" and only such police regulations as are usual and commonly known by that designation.

That Congress has not conferred upon the Commissioners of the District of Columbia the authority to require of owners and occupants of property in the District the removal of snow and ice from the sidewalks in front of their premises is very plain, not only from the absence of any such grant of authority from the statute book, but still more clearly from the fact that subsequently to the enactment of the joint resolution of 1892 it expressly legislated itself on this precise subject on at least three several occasions. And we are warranted by the well-known usage of committees of Congress in this regard in the statement that the legislation was by the procurement of the Commissioners, and with the knowledge of their own incapacity to enact such legislation under the guise and pretense of regulation.

"An act for the removal of snow and ice from the sidewalks, crosswalks, and gutters in the cities of Washington and Georgetown, and for other purposes" (28 Stat. 809), was passed by Congress on March 2, 1895, by which it was sought to deal with the whole subject-matter. It provided that owners or occupants of private property should remove the snow and ice from the sidewalks in front of their premises; that the Commissioners of the District should remove such deposit from the crosswalks, that is, from the crossing places of the streets and alleys, and from the gutters, and that the superintendent of public buildings and grounds, if he had any money in his hands for the purpose, should clear the sidewalks adjacent to the public parks from ice and snow. There is no provision in the act for the removal of the deposit from the sidewalks adjacent to the public buildings, and there seems to have been no very serious attempt on the part of the public authorities, either national or municipal, to comply with the requirements of the act.

The act of 1895 appears to have been deemed insufficient; and again, no doubt at the instance of the Commissioners, Congress legislated on the subject, and passed the act of March 2, 1897 (29 Stat. 608), which was substantially no more than a re-enactment of the act of 1895, with the omission of the section in regard to the superintendent of public buildings and grounds—for what reason does not appear—and with the addition of "agents" to owners and occupants of land, apparently with the intention of reaching the cases, rather numerous in this city, where property is owned by non-residents. This latter act, which substantially covered the same ground as the act of 1895, with the exception of the provision relating to the superintendent of public buildings and grounds, did not in terms purport to repeal the previous act. It was the act of 1897 that was before us in the Holtzman case (19 D. C. App. 454), in which we held, as to the special feature that differentiated it from the act of 1895, that it was null and void, and at the same time pointed out various crudities, inconsistencies, and inequalities that tended to discredit it in its entirety.

Presumably to cure the defects thus pointed out, Congress again legislated on the subject, and by an act of February 10, 1904 (33 Stat.), most elaborate in its details, sought to remove some of the most objectionable features ofthe act of 1897, and to reach the owners of unimproved property, as well as the owners and occupants of improved property. It expressly repealed the act of 1897, but made no refeernce to the act of 1895, and it was curiously remarkable for its omission of the provision in the acts of 1895 and 1897, whereby the Commissioners were required to remove the snow and ice from the sidewalks and gutters. Thus progressively were eliminated, first, the provision requiring in a limited and effective manner the superintendent of the public buildings and grounds to remove the snow and ice from the sidewalks adjoining the public parks, and secondly, the provision requiring the Commissioners to remove the snow and ice from the crossways and gutters, while the individual citizen was sought to be coerced by heavier penalties to do the same thing with reference to his own property.

This act of 1904 was before us in the case of McGuire v. D. C., 24 D. C. App. ; and we held it to be, if possible, more objectionable than the act of 1897, and with the exception of the section which repealed the act of 1897, to be wholly null and void.

These repeated attempts at legislation, however ineffectual in their result, are sufficient to show that Congress reserved this subject for itself and did not confer upon the Commissioners the power to regulate it.

The decision in the McGuire case was rendered on May 24, 1904, and there was ample opportunity for application to Congress for legislation that would be free from objection. But the third and last session of the Fifty-eighth Congress was permitted to come and go, so far as we are advised, without any effort whatever on the part of the District authorities to provide any such legislation. At all events, there has been no such legislation. Instead of an application to Congress there has been this ill-advised resurrection of an old municipal ordinance, and the promulgation of it by the Commissioners as a regulation of their own, intended to effect what three several acts of Congress had failed to effect. We can not but regard it as a plain usurpation of the powers of Congress.

Congress has imposed upon the municipal authorities of the Commissioners of the District of Columbia the duty of caring for the streets, avenues, and alleys, and the highways of the District, and of keeping them free from obstructions; and this duty extends to the sidewalks, as well as to the carriageways. In this

Digitized by Google

regard there is no distinction whatever between the two. Whatever be the cause of such obstructions, whether they be caused by the elements, or purposely or negligently by human instrumentality, the duty is still incumbent on the municipality of removing them at the earliest practicable moment. We presume that if the sidewalks were washed away by an extraordinary downfall of rain, or were sunk through some subsidence of the earth, it would be the duty of the municipality to repair the defect with the least possible delay. If stones or earth or gravel were thrown upon the sidewalk by a careless or inconsiderate person, it would be the duty of the municipality to remove such obstructions or cause them to be removed by the person who caused them. In no one of these cases could the municipality evade the performance of its own plain duty by requiring an adjacent owner of property to perform it. This is an elementary proposition which no one can seriously dispute. Is it different when an obstruction of the highway occurs through the accumulation of snow and ice on the traveled highways of the District? It is true that this obstruction differs from the others than have been mentioned in its magnitude and wide extent, in the comparative frequency of its occurrence, and the palpable necessity for its speedy removal. But these are circumstances that do not affect the liability of the municipality, if the liability has been imposed upon it, but only grounds for the consideration of the law-making power when it comes to deal with the subject. The accumulation of snow and ice is as much of an obstruction on the public highways as is a washout or a sinking of the earth, and in the absence of congressional legislation the municipality can not relieve itself from its duty with reference to the one any more than from its duty with reference to the other. That Congress may so relieve it, if it thinks proper, must of course be conceded, and we have never held that, by a just and equal law, adequate to the purpose, it may not impose that duty upon individual citizens. At the instance of the Commissioners, it has been sought so to relieve the municipality to a certain extent from that duty by the acts of Congress that have been cited. But if those acts have failed fully to accomplish the purpose, it does not follow that the Commissioners may take the law into their own hands and by an illegal ordinance attempt to shift the burden.

We are of opinion that as the law now stands Congress alone, and not the Commissioners, have the authority to regulate the removal of snow and ice from the paved sidewalks, crossings, and other traveled spaces of the public highways of the District; that, as the law now stands, the duty is upon the municipality itself to cause such removal; and that it is not competent for the Commissioners by any regulation whatever which they may adopt to remove that burden from themselves as the responsible agents of the municipality and impose it upon individual citizens.

We are of opinion that the regulation, under which the plaintiff in error was prosecuted in the Police Court, is an illegal exercise of authority and unwarranted by any power conferred by Congress upon the Commissioners. Several inherent defects have been pointed out in it; but these it is unnecessary to consider, since the whole regulation must fail for want of authority to make it.

The judgment of the Police Court in the premises will be reversed, with costs; and the cause will be remanded to that court with directions to vacate such judgment and to discharge the defendant. And it is so ordered.

Reversed.

Master and Servant—Defective Boiler.—In an action for death of a fireman by the explosion of a boiler, evidence held to sustain a finding of defendant's negligence in failing to apply the bursting test to the boiler after it had been repaired. Shea v. Pacific Power Co. (Cal.), 79 Pac. Rep. 373.

Infants—Contract—Ratification.—Where an infant has lost or squandered the consideration of a contract and desires, on coming of age, to rescind, he can not be required to purchase the right of reclaiming his own by abstractions from his estate.—Southern Cotton Oil Co. v. Dukes (Ga.), 49 S. E. Rep. 788.

Bankruptcy—Debts Discharged.—A judgment for costs in a criminal prosecution is not a debt "due as taxes" levied by the State, within the exception in Bankr. Act, section 17, and is satisfied by discharge of the judgment debtor in bankruptcy. Olds v. Forrester (Iowa), 102 N. W. Rep. 419.

Master and Servant—Complaint and Promise to Repair.—A section hand's assumption of risk from a defect in a hand car held suspended by the foreman's promise, on making complaint, to repair it. Foster v. Chicago R. I. & P. Ry. Co. (Iowa), 102 N. W. Rep. 422.

Bills and Notes—Bank's Right to Proceeds from Deposited Draft.—Where the payee of a draft deposits the same with a bank and receives credit therefor, the proceeds of the draft belong to the bank.—T. S. Reed Grocery Co. v. Canton Nat. Bank (Md.), 59 Atl. Rep. 716.

Bills and Notes—Directing Verdict.—In a suit by the indorsee of a note against a maker, where defendant failed to show that the consideration had failed, it was not error to direct a verdict for plaintiff.—Gould v. Small (Ga.), 49 S. E. Rep. 723.

Brokers—Sales on Margins.—In purchase and sale of stocks on margin through brokers, sufficiency of notice of sale by broker for failure to deposit margin, held to depend on rules of stock exchange in the absence of special agreement. Ling v. Malcom (Conn.), 59 Atl. Rep. 698.

Digitized by Google

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Wm. M. Lewin, Attorney
In the Supreme Court of the District of Columbia.
John Turnbull, Jr., John T. Uthman, Daniel H. Doyle, and Samuel R. Waite, heretofore Copartners trading under the firm name of John Turnbull, Jr., & Co., Plaintiffs, v. Samuel A. Nattans, Defendant.
At Law, Numbered 47,722.

The object of this suit is the recovery from the defendant by the plaintiffs of the amount of a judgment recovered by the plaintiffs against the defendant, April 29, 1905, in the Superior Court of Baltimore city, Maryland, to wit, $829.55, with interest on $819.80 thereof from April 29, 1905, besides the costs of this suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiffs' claim. It is, therefore, this 16th day of June, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in The Washington Law Reporter for three successive weeks. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 24-3t

Thomas P. Woodward and W. Mosby Williams, Solicitors
In the Supreme Court of the District of Columbia.
Georgine Simms et al. v. Elizabeth Taylor et al.
Equity 23,817.

W. Mosby Williams and William C. Martin, trustees, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lot 15 in Corcoran's subdivision in square 587, Washington City, District of Columbia, to William J. Howard, for the sum of $1,870. It is, therefore, this 5th day of June, 1905, ordered that said sale will be ratified and confirmed on the 3d day of July, 1905, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. By the Court: WENDELL P. STAFFORD, Associate Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

John M. George, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles B. Hinton,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of June, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. ELIZABETH HOEKE, 336 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,840. Administration. 24-3t

Thomas Walker, Solicitor
In the Supreme Court of the District of Columbia.
Lucy Thornton v. John Thornton and Hattie Geary, alias Hattie Mathews.
No. 24,880. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 8th day of June, A. D. 1905, ordered that the defendant, **John Thornton,** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Record. By the Court. WENDELL P. STAFFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

Legal Notices.

Walter C. Clephane, Solicitor
In the Supeme Court of the District of Columbia.
H. Rozier Dulany, Trustee, v. John W. Pilling, Alan O. Clephane, Eliza Andrews, and the Unknown Heirs, Alienees, or Devisees of Andrew Link.
No. 25,433, Equity Docket.

The object of this suit is to declare the title to the real estate hereinafter described to be good in fee simple in the complainant by adverse possession, subject to the deed of trust in the bill of complaint described, said real estate being described as follows, to wit: the north one (1) foot six (6) inches of sublot thirty (30), and all of sublots thirty-one (31), thirty-two (32), and thirty-four (34), and the north fifty-two (52) feet of sublots thirty-five (35), thirty-six (36), and thirty-seven (37), of Andrew J. Miller's subdivision of lots twenty (20) to twenty-four (24), inclusive, of F. T. Browning, trustee's, subdivision of original lots numbered nine (9), ten (10), and eleven (11), in square numbered eighty-four (84), in the city of Washington, D. C., as said Miller's subdivision appears of record in book numbered twenty (20), at page 48 of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, by Walter C. Clephane, his solicitor, it is, this 12th day of June, A. D. 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Andrew Link, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

John R. Shield, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bridget Reardon, Deceased.
No. 12,611. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Edward J. Duffy, it is ordered this 14th day of June, A. D. 1905, that notice be and hereby is given to **Annie Connell, Kate Philpot Elliott, and Hannah Philpot Smith,** and to all others concerned, to appear in said court on **Monday, the 17th day of July, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-3t

Barnard & Johnson, Solicitors
In the Supreme Court of the District of Columbia.
Emma L. Elliott et al., Complainants, v. William Prout et al., Defendants.
No. 25,317. In Equity. Doc. 56.

The object of this suit is to establish of record the title of the complainants in fee simple by adverse possession to all of original lot numbered seven (7) in square numbered one thousand (1,000), improved by the two (2) dwellings, 1240-1242 on Eleventh street southeast, in the city of Washington, District of Columbia. On motion of the complainants, it is this 14th day of June, A. D. 1905, ordered that **William Prout, William King, and William Prout, Jr.,** or their respective unknown heirs, alienees, and devisees (if they be dead), cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order, good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-3t

Digitized by Google

Legal Notices.

B. P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward C. Halliday**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. HENRIETTA M. HALLIDAY, 1814 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,877. Administration. 24-3t

---

Philip Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Lucinda Bailey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,929. Administration. 24-3t

---

A. A. Hoehling, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel H. Griffith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WARREN G. GRIFFITH, 641 Land Title Building, Philadelphia, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,914. Adm. 24-3t

---

Hallam & Hallam, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George Fouse**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. PATTY C. H. FOUSE, 7 Ledyard Place, Newport, R. I. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,861. Administration. 24-3t

---

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Magdalina Tugitt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. JOHN P. HINKEL, 119 C st. S. E.; HENRY E. TRIPP, 410 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,987. Admin. 24-3t

Legal Notices.

Chase Roys, Solicitor

In the Supreme Court of the District of Columbia.

Daisy E. Belt v. King Wilson Belt.
Eq. No. 22,896. Eq. Doc. 51.

The object of this suit is to obtain a divorce from the bond of marriage. On motion of the complainant it is this 23d day of January, 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. (Signed) THOS. H. ANDERSON. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 24-3t

---

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Ann Slight**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. FLOYD E. DAVIS, 7th and E sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,656. Administration. 24-3t

---

F. S. Bright, Attorney

In the Supreme Court of the District of Columbia,
Holding the Probate Court.

In the Matter of the Estate of Samuel Thomas Labby, Deceased. No. 12,968.

Application having been made to the Supreme Court of the District of Columbia, holding the Probate Court, by Gustavus E. Labby and Morris H Labby, brothers of the decedent, for the granting of letters of administration on said estate to F. S. Bright, it is ordered this 13th day of June, 1905, that notice be and hereby is given to **Ella Cabell Miller, daughter of, and Robert, Brandon, Lewis, William, Joyce, Garnett, and Nannie, grandchildren of Mary Joyce Neville; H. Denison Cole, Francis and Walter Denmead, Harold and Florence Denmead, Margaret and Elizabeth Amos, and any other unknown heirs at law and next of kin of said Samuel Thomas Labby, deceased,** and to all others concerned, to appear in said court on **July 17, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Baltimore Sun once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 24-3t

---

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Jennie R. Willoughby et al., Complainants, v. Philip H. Mires et al., Defendants. No. 25,437. Equity Docket 56.

The object of this suit is to establish the title of the complainant to original lots 11 and 12 in square 61 in the city of Washington, District of Columbia, to be good in fee simple in the complainants by adverse possession. On motion of the complainants, by Barnard & Johnson, their solicitors, it is by the court, this 14th day of June, A. D. 1905, ordered that **Philip H. Mires, Philip Meyer, George Burnes, Christian Hines, Michael Myers, Matthew Hines,** and **William Robertson**, or if they be dead, their unknown heirs, alienees, and devisees, and each of them, cause their appearance to be entered herein on or before the first rule day occurring forty (40) days after the first publication of this order, exclusive of Sundays and legal holidays; otherwise this cause will be proceeded with as in case of default. The court is satisfied by good cause shown by the affidavit filed herein that it is not necessary that this order should be published at least twice a month during the period of not less than three (3) months. This order shall be published once a week for four (4) successive weeks before said rule day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

Digitized by Google

Legal Notices.

H. Prescott Gatley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James Augustin Greer**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of June, 1905. JAMES W. GREER, EDWARD R. GREER, by H. Prescott Gatley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,284. Admr. 24-3t

SECOND INSERTION.

Walter C. Balderston, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Anna L. Quinban**, otherwise known as **Amy Lathrop**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. JOHN J. O'BRIEN, 1339 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,970 Adm. 23-3t

R. Golden Donaldson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward McMahon, Deceased.
No. 12,858. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Ellen McMahon, and summons having been duly issued against Joseph Patrick McMahon and Thomas McMahon, and returned not be found, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Joseph Patrick McMahon and Thomas McMahon**, and to all others concerned, to appear in said court on **Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Otis B. Bullard, Deceased.
No. 12,965. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration, with will annexed, on said estate, by Henry M. Cutler, it is ordered, this 6th day of June, A. D. 1905, that notice be and hereby is given to the **unknown next of kin**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Legal Notices.

Douglass & Douglass, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Baiddy Ashbourne Capehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 22d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of June, 1905. FANNY CAPEHART, care of Douglass & Douglass, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,854. Adm. 23-3t

Julius I. Peyser and Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Herman Baumgarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. ADA BAUMGARTEN, 466 Mass. ave. N. W., ARTHUR BAUMGARTEN, 414 10th st. N. W. Attest: JAMES TANNFR, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,977. Administration. 23-3t

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Bernard H. Johnston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 7th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of June, 1905. JAMES M. JOHNSTON, WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 23-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Norton Frank**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, A. D. 1905. EMMA R. ELIAS, care Geo. F. Williams, 606 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,954. Administration. 23-3t

F. D. McKenney and J. S. Flannery, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of New York and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice L. Cilley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of June, 1905. HARRIET C. RUSSELL, 21 West 11th st., New York City; EMMA CILLEY, 1539 I st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,913. Adm. 23-3t

Digitized by Google

Legal Notices.

G. Percy McGlue, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel M. Ryan, Deceased.
No. 12,922. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James Ryan, it is ordered this 8th day of June, A. D. 1905, that notice be and is hereby given to **Johanna Carew**, of Tipperary, Ireland, and to all others concerned, to appear in said court on **Friday, the 21st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia Clerk of the Probate Court. 23-3t

Sydney F. Marshall, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna J. King, Deceased.
No. 12,926. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by A. Virginia Chessman, it is ordered this 7th day of June, A. D. 1905, that notice be and hereby is given to **Joseph Plankington, Jesse Plankington, Rebecca Plankington, and Gertrude Plankington**, of Netawaka, Kansas, and **Horace Chessman**, of Philadelphia, Pa., and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Robert E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aletia Ferguson**, late of the State of Pennsylvania, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. MARK FERGUSON, 5154 Brown st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,899. Administration. 23-3t

W. C. Prentiss and C. S. Muir, Solicitors
In the Supreme Court of the District of Columbia.
William H. Saunders et al. v. William Holmead et al.,
Equity, No. 23,552. Docket 58.

Upon consideration of the sixth report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating that they have received from **Thomas E. Jarrell** an offer of twenty-five cents ($0.25) per square foot, all cash, for the west twenty (20) feet front, by the depth thereof, of lot numbered thirty-two (32) in block thirty-one (31) of the Washington Loan and Trust Company's subdivision in Petworth addition to the city of Washington, District of Columbia, it is by the court, this 7th day of June, 1905, adjudged, ordered, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to the contrary be shown on or before the **30th day of June, 1905.** Provided a copy of this order shall be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

Legal Notices

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth Behrens Kenny, Deceased.
No. 12,852. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by John W. Pilling, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Hannah Williams and the unknown next of kin of Elizabeth Behrens Kenny**, and to all others concerned, to appear in said court on **Tuesday, the 18th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Francis M. Moore**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. DAVID MOORE, 717 14th st. N. W.; WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,924. Administration. 23-3t

Irwin B. Linton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Sarah Guffin, Deceased.
No. 12,938. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Susan A. Guffin and Harriet C. Guffin, executrixes, it is ordered this 8th day of June, A. D. 1905, that notice be and hereby is given to **Richard Guffin**, of Columbus, Ohio, and the **unknown heirs of James Austin Guffin, deceased**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

L. Cabell Williamson, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Wilson Gregory,
Deceased.
Administration No. 12,948.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, by Francis G. Gregory, it is ordered, this 8th day of June, A. D. 1905, that notice be and hereby is given to **Anna Gregory Carl, Margaret Gregory Taylor, William H. Gregory, Mary Gordon, Phoebe Oliver, Edward F. Brooks, Mary Brooks, Lula Brooks, Katie Brooks, Webster Stauffer, Mary Myrtle Ranck, Walter Stauffer, Drew Stauffer, Mabel Brooks**, and all others concerned, to appear in said court on the **19th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 23-3t

Digitized by Google

Legal Notices.

Wm. L. Pollard and Mason N. Richardson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frank Marrow**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. WILLIAM L. POLLARD, 609 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,951. Administration. 23-3t

---

Smith Thompson, Jr., Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of Allegheny City, Pa., has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Elbert Clagett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1905. LAVINIA E. CLAGETT, care Smith Thompson, Jr., Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,953. Administration. 23-3t

---

John Paul Earnest, Solicitor
In the Supreme Court of the District of Columbia.
Champe B. Thornton et al. v. Jennie T. Powers et al.
Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, herein filed, it is, this 2d day of June, A. D. 1905, ordered by the court that said trustee be, and he is hereby, authorized to accept the offer of Carl C. King, to purchase for $1,000 lot 8 in block 8, and also the offer of Harry C. Fisk to purchase for $600 lot 1 in block 13, both of said lots being in Grammer's addition to Takoma Park, recorded in county book 7, page 112, in the office of the surveyor of the District of Columbia, and included in the decree of sale in the above-entitled cause, and further that said sales of said lots be ratified and confirmed by the court unless cause to the contrary be shown on or before the **2d day of July, A. D. 1905. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 23-3t

---

W. H. Soles, Solicitor
In the Supreme Court of the District of Columbia.
George Winsmore v. Samuel G. Thompson et al.
Equity, No. 25,523. Docket No. 56.

The object of this suit is to remove cloud on complainant's title to east one-half of lot 23 in Wright & Cox's subdivision of part of Pleasant Plains, in the District of Columbia. On motion of the complainant, it is, this 5th day of June, A. D. 1905, ordered that the defendant, **Samuel G. Thompson**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

---

R. E. Pairo and John J. Brosnan, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William G. Phillips**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. CHARLOTTE E. PHILLIPS, 1732 Connecticut Ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,957 Administration. 23-3t

Legal Notices.

THIRD INSERTION.

T. Percy Myers, Attorney
Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William J. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of May, A. D. 1906, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. ANDREW J. MILLER, in care of T. Percy Myers, atty., 486 La. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,950. Admn. 22-3t

---

F. Sprigg Perry, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mrs. Emily V. Sproston, Deceased.
No. 12,934. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William G. Sproston, it is ordered this 1st day of June, A. D. 1905, that notice be and hereby is given to **Legare Phenix and certain unknown next of kin of the decedent, and to all others concerned, to appear in said court on Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. **Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 22-3t

---

E. H. Thomas, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **America E. Towner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of May, 1905. LAURA E. TOWNER, 1105 O st. N. W. Attest: WM. C. TARLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,955. Administration. 22-3t

---

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Llewellyn G. Estes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. L. W. ESTES, Corcoran Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,740. Administration. 22-3t

---

Alexander H. Bell, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Philip Barry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of May, 1905. DANIEL P. McCARTHY, 610 Penn. ave. N. W.; FRANK P. MADIGAN, 1206 Va. Ave. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,947. Administration. 22-3t

Digitized by Google

Legal Notices.

Thos. Walker, Attorney

Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Diana Walker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of January, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of May, 1905. THOMAS WALKER, 506 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,835. Administration. 22-3t

Thomas Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of John Johnson, Deceased.
No. 12,782. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Walter G. Bradley, it is ordered this 29th day of May, A. D. 1905, that notice be and hereby is given to **Dennis Johnson**, and to all others concerned, to appear in said court on **Monday, the 3d day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

E. S. Theall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Bayne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1905. MAE A. BAYNE, 1141 Connecticut ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,946. Administration. 22-3t

Blair & Thom, Solicitors

In the Supreme Court of the District of Columbia.

Josephine Fant et al., Complainants, v. Hamilton G. Fant et al., Defendants. In Equity, No. 25,187.

The object of this suit is to have a trustee appointed to take possession of a certain fund, namely, $35,410, now in the registry of the court, being the proceeds of a sale to the District of Columbia of lot two (2) in square four hundred eighty-nine (489), and to hold the said fund in the same manner and for the same persons, and in the same interests that they would have had in said lot 2 in square 489. On motion of the complainants, it is, this 29th day of May, A. D. 1905, ordered that the defendants, **Hamilton G. Fant, Emma Fant, Clarence A. Fant, Katherine Fant, Paul E. Fant, Emily Reardon, Elise O'Dunne, Josephine Reardon, Emily Reardon, Addie Reardon, Frances Kenney, Frances Kenney, Junior, Josephine Fant, Elizabeth Smucker, Elizabeth Smucker, Junior, Josephine Smucker, Marie Smucker, Joseph Hellen, Mamie Hellen, Johnson Hellen, Mary Hellen, Johnson Hellen, Junior, Mary Hellen, Charles Hellen, Clarence C. Hellen, and Mary E. Moses**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for each of three successive weeks before said rule day in The Washington Law Reporter and The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, by F. E. Cunningham, Asst. Clerk. 22-3t

Legal Notices.

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louisa Hagner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1905. ALEXANDER B. HAGNER, 1818 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,806. Administration. 22-3t

Hamilton & Colbert, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth S. Israel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of May, 1905. HUGH L. BOND, Jr., Md. Trust Building, Balto., Md.; ALFRED Z. HARTMAN, 1210 Bolton st., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,828. Admr. 22-3t

Chas. E. Riordon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **David Logan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of May, 1905. HANNAH Mc. LOGAN, 1407 Howard ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,905. Administration. 22-3t

FOURTH INSERTION.

Filed May 10, 1905.—J. R. Young, Clerk.

John R. Shields, Solicitor

In the Supreme Court of the District of Columbia. Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 25

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JUNE 23, 1905

CONTENTS.

Editorial 385
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Lillian S. Butler, appellant, v. John D. Frazee.... 387
Matilda S. Vogt, etc., appellant, v. Sophia Vogt et al 390
H. B. F. Macfarland et al., Commissioners, etc., appellants, v. Lorin M. Saunders 393
Legal Notices 394

Death of Mr. Joseph Shillington.

In the death of Mr. Joseph Shillington, which occurred at his home in this city on Tuesday morning, June 13, the bar of the District has lost one of its best known and most popular members. For some time past it has been known that he was suffering with tuberculosis, and in the heroic struggle he made against that dread disease he had the fullest sympathy of a wide circle of friends, including among that number practically the entire membership of the bar.

Mr. Shillington was a native of this District, and his professional life, embracing nearly twenty years, was spent here. His success at the bar began with his admission to practice, and very shortly thereafter he was made an assistant to United States Attorney Hoge, leaving that position to accept one in the office of the attorney for the District of Columbia, under Mr. A. G. Riddle. During the incumbency by Mr. Henry E. Davis of the position of United States Attorney, Mr. Shillington was one of his most valued and capable assistants.

Mr. Shillington, while not confining his practice to criminal cases, was recognized as among the leaders of the bar in that class of practice. His knowledge of the law was thorough, and he was an orator of exceptional ability. By his high character, professional and private, he commanded the respect and esteem of both bench and bar, and his untimely death is the occasion of sincere regret.

District Code—Provisions as to Limitation of Actions—None Applicable to Foreign Judgments.

An interesting question involving a construction of sections 1212, 1213, 1265, and 1267 of the Code was decided by Chief Justice Clabaugh on Friday, June 9, in sustaining plaintiff's demurrer to two pleas of the Statute of Limitations in the case of John C. Bradley to the use of the Guarantee Trust and Safe Deposit Company of Philadelphia v. Mabel Grace McKay and Henry F. Woodard, executrix and executor of the will of Nathaniel McKay, deceased, Law No. 47,633.

Plaintiff brought suit upon a judgment for $2,585.15, rendered against Nathaniel McKay in 1889 in the Supreme Court of the State of New York and amounting at the present time, with interest, to over $5,000. Defendants filed three pleas, nul tiel record, Statute of Limitations of three years, and Statute of Limitations of twelve years. To the two pleas of the Statute of Limitations the plaintiff demurred. At the hearing, on May 19, it was contended by Mr. Fulton Lewis, attorney for the plaintiff, that section 1267 of the Code contained the only provisions respecting limitation of actions on foreign judgments; that its effect was, in an action on a foreign judgment, to import the Statute of Limitations applicable to the judgment in the State or country where the same was rendered, and to make the same the law of this jurisdiction for the purposes of the suit, and that if section 1267 had no such effect, then there is in this District no Statute of Limitations applicable to foreign judgments, as sections 1212 and 1213 relate specifically to domestic judgments, and the language of the general three-year limitation in section 1265, when read in the light of the repealed part of section 1267, could not be held to apply to foreign judgments. Defendants' attorneys insisted that the general three-year limitation is broad enough to cover actions on foreign judgments; that the effect of section 1267 is confined to those cases where the judgment is barred at its home in less than three years; that section 1267 is not a statute of limitation, but is simply a provision relating to barred judgments, and that it should not be given any weight in determining the question before the court.

Chief Justice Clabaugh in disposing of the case, said he was inclined to think that section 1267 as it now stands is not to be regarded as a statute of limitation. Such being the case, it was necessary to consider whether there is any other section of the Code which does provide a limitation of actions on foreign judgments. He said that the limitation provided in sections

Digitized by Google

1212 and 1213 could not apply to foreign judgments because it was specifically confined to domestic judgments, and the only other section of the Code which could contain a limitation applicable to foreign judgments was section 1265. That section, after prescribing limitations for various causes of action, enacts the following: "And no action the limitation of which is not otherwise specifically prescribed in this section shall be brought after three years from the time when the right to maintain such action shall have accrued." The question was whether this language should be held to apply to foreign judgments. The chief justice said that if it be held so to apply, then a creditor holding a sealed obligation would actually suffer a disadvantage as a result of reducing his claim to judgment in another jurisdiction. By the prior provisions of this same section he would be allowed twelve years in which to sue in this District upon the sealed instrument, whereas if he reduced his claim to judgment in another jurisdiction, it would be barred in three years. He said that while there was no doubt of the power of Congress to enact such inconsistency, if it saw fit, the absurdity of such a condition of things was, in a case where the meaning of the legislature was in doubt, a very strong argument against adopting a construction which would lead to such results.

Moreover, the chief justice said the authorities hold that notwithstanding the fact that part of a statute has been repealed, the repealed part may be taken into consideration in construing what remains. Section 1267, when the Code went into effect, contained the following in addition to what now remains: "And whether so barred or not, no action shall be brought in the District on any such judgment or decree rendered more than ten years before the commencement of such action." The existence of this clause at the time this Code was enacted showed plainly that Congress did not intend the three limitations to apply to foreign judgments.

But apart from these considerations and taking the language of section 1265 by itself, the chief justice was of the opinion that the general three-year limitation invoked by defendants could not apply to foreign judgments, but referred to causes of action in the nature of contracts, and in support of his views the chief justice quoted from the opinion of Justice McLean in Todd v. Crumb, 5 McLean, 173, where it was held that similar language in the Ohio Statute of Limitations did not apply to a judgment of a sister State, and that such a judgment was not a specialty in the legal sense of the term and hence not barred by the limitation provided in the case of specialties. Chief Justice Clabaugh, approving the reasoning of the learned justice in the case quoted from, concluded that none of the provisions of our Code relative to limitation of actions are applicable to foreign judgments, and that, as the Code has repealed the Maryland law on that subject formerly in force here, there is now no limitation whatever applicable to actions on foreign judgments in this District, but the same if not barred in the jurisdiction where they were rendered, may be sued upon at any time here subject only to the effect of the common law presumption of payment after the lapse of twenty years. The plaintiff's demurrer was therefore sustained.

In the foregoing case plaintiffs were represented by Mr. Fulton Lewis, and the defendants by Messrs. Birney & Woodard and Worthington, Heald & Frailey.

Automobile—Accident—Liability.

The Supreme Court of Indiana held, in the case of The Indiana Springs Company et al. v. Brown, that in the exercise of his right to operate an automobile on the public highways, a person is bound to take into account the tendency of its appearance, sound, and velocity to frighten horses that are not used to such machines, and to exercise his rights on the highway with due regard to the rights of other travelers driving horses thereon, and that an autoist who sees that a horse is evidently frightened by his rapid approach and takes no measures to avert the threatened injury from that cause, is liable to persons driving such horse for injuries proximately caused by its fright, which could have been averted after observing its fright by stopping the automobile or slacking its speed momentarily.

Railroad—Accident—Shipper's Pass.

A person while traveling on a freight train on a stock shipper's pass for the purpose of attending to the live stock being shipped sustains the relation of passenger to the carrier, but in a restricted and modified sense, according to the decision of the Supreme Court of Nebraska in the case of The Chicago, Burlington, and Quincy Railroad Company v. Troyer. In this case the appellee was injured while traveling on a stock shipper's pass. The court held that the question of the alleged negligence of the company was one for the jury to determine.

Contracts—Tender After Action Brought.—Where plaintiff alleged performance, and damages by defendant's neglect in performing his part of the contract, he can not recover on proof of part performance and inability to perform by defendant's default. Young v. Stickney (Oreg.), 79 Pac. Rep. 345.

Digitized by Google

Court of Appeals of the District of Columbia.

LILLIAN S. BUTLER, APPELLANT,
v.
JOHN D. FRAZEE.

MASTER AND SERVANT; UNSAFE APPLIANCES; NOTICE BY SERVANT OF DEFECT; ASSUMPTION OF RISK.

1. It is the duty of the employer to provide suitable and reasonably safe machinery and appliances for the use of his employee, and this duty can not be avoided by entrusting its performance to some other employee; but there is no guaranty by the master that the machinery and appliances provided are absolutely safe.
2. When an injury is received by an employee while working with machinery or appliances provided for his use, the fact of accident carries with it no presumption of neglect of duty on the part of the employer, and the burden is upon the employee to show such negligence as an affirmative fact.
3. Where an employee undertakes and continues the use of defective and unsafe appliances, either with actual notice of such defect, or where the same is open to ordinary observation in the usual course of its use, he must be deemed to have accepted the risk of all danger reasonably to be apprehended from such use, and can not recover of his employer.
4. In an action for injury received by plaintiff while engaged in feeding a mangle in a steam laundry, the negligence of defendant was alleged to consist in that the finger guard on the mangle was improperly adjusted. It appeared plaintiff was 22 years of age and had about two years' experience in operating mangles in other laundries, and had been operating the one at which she was injured for more than two months prior to the accident. The space left in the adjustment of the finger guard, which it was alleged was too great, was plainly visible. *Held*, that she was not entitled to recover, and the trial court properly directed a verdict for defendant.

No. 1485. Decided April 17, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,829, entered upon a verdict directed by the court in an action for personal injuries.

Mr. J. C. Gittings and *Mr. J. Morrill Chamberlain* for the appellant.

Mr. C. A. Keigwin and *Mr. L. J. Mather, Jr.*, for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was brought by the appellant as plaintiff in the Supreme Court of the District of Columbia to recover damages occasioned by the negligence of her employer, the appellee.

The bill of exceptions recites that the plaintiff offered evidence tending to show:

That the defendant is and in the year 1902, was, the owner of a steam laundry in the city of Washington, in which laundry was used a machine for drying and ironing clothes called a mangle. Said mangle consisted essentially of a steel cylinder four feet in diameter and eight feet long, which was heated by steam under a pressure of eighty pounds to the square inch, and was made to revolve in such a way that the surface next to the operator moved upward and away from her. Resting upon the upper half of the surface of the said cylinder were five rollers, which were held in place by attachments to the stationary frame of the machine, and which revolved in a direction opposite to that of the cylinder, the said rollers being set each at a distance of about six inches from the next. The purpose of the mangle was to iron and dry the clothes by carrying them over the surface of the cylinder and under the rollers, and it was the duty of the operators feeding the machine to introduce the edge of the article to be ironed between the cylinder and the first roller. For this purpose two operators were necessary, one standing at each side of the mangle and directly in front of the steam cylinder. A part of the machine intended to facilitate the feeding thereof, was a board, called the feed board, which was attached to the frame of the mangle and extended across the machine, just in front of which the operator stood. This feed board was eight feet long, extended from side to side of the mangle, was twelve to fifteen inches wide, two and a half inches thick, and weighed about sixty pounds. The inner edge of the feed board was beveled, so as to fit closely to the surface of the cylinder, and the feed board was so fixed in place by bolts that the inner edge was as close to the cylinder as it could be without causing friction.

It was the duty of the operators feeding the mangle to spread the article to be ironed while damp but having been smoothed out by the hands upon the surface of the feed board, and to gradually push the same across the said board in such a manner that the inner edge of the article should touch the surface of the cylinder, and being carried upward thereby, should be engaged by the first of the rollers, and so be drawn in between the cylinder and the rollers. To this end it was necessary for the operators to place the palms of their hands flat upon the article to be ironed, so as to produce sufficient pressure for the purpose.

The first roller was about four inches above the feed board. For the safety of the operators the machine was equipped with a safety apparatus called a finger-guard. This was a bar of steel, eight feet long, three inches wide, and one-eighth of an inch thick, fixed to the frame of the machine and extending horizontally from side to side thereof, in front of the cylinder and about four inches distant from its revolving surface. Said guard was adjustable within certain limits and might be set at a height above the feed board for one-quarter of an inch to four inches. In the mangle used by the defendant, the guard had been originally adjusted at a height of one and one-half inches above the feed board and had always been in that position and was so at the time of the accident hereinafter mentioned.

The plaintiff entered the employ of the defendant in the month of May, 1902, and in October of that year was assigned to the duty of assisting in feeding the mangle hereinbefore described. She was about 22 years of age and had had about two years' experience in the operation of mangles in other laundries; that all the mangles she had operated were equipped with safety devices or finger guards which prevented the operators' hands from coming into contact with the steam cylinder; that during her entire experience in the defendant's and other laundries she had never known or heard of anyone being injured while feeding a mangle by reason of their hands coming into contact with the steam cylinder of a mangle equipped with the safety device or finger guard rail; that prior to beginning to operate defendant's mangle, plaintiff saw that same

Digitized by Google

was equipped with a finger guard rail; that she had never been warned by anyone that said mangle was more dangerous than any of the other machines she had previously operated, nor that the guard rail was improperly adjusted, in that it was too high and would permit of her hands being drawn under same and coming into contact with the cylinder, nor was there anything about the machine to lead her to believe that it was any more dangerous than any other mangle she had operated; that prior to the accident plaintiff did not know, nor had she been warned, nor had she any reason to suppose that the finger guard rail had been adjusted so high that it would permit of her hands being drawn under it into the machine; she did not know just how far the finger guard rail was placed from the cylinder. From the position in which she stood in feeding the machine she could not see the point where the first roller came in contact with the steam cylinder, her view being obstructed by the finger guard rail; that her hands had never been brought into contact with the steam cylinder before, nor had her hands ever been carried under the guard rail previous to the injury.

The plaintiff gave evidence tending to show that her duty consisted in feeding the linen to the machine while standing on the left hand side of same; that the feed board next to the cylinder on the left hand side was loose and worn; that such was its condition when plaintiff first began to operate it in October, 1902, and so remained up to the time of the injury; that this defect permitted the linen while being fed into the machine to catch on the right hand side, while at times falling or dropping between the edge of the feed board and the steam cylinder on the plaintiff's side.

The plaintiff from the time aforesaid in October, when she was assigned to feeding the said mangle, until the 28th day of the following December, was continually and daily employed upon the said machine. During this period she did not report any defect in the construction, adjustment, or repair of the machine, nor did she make any complaint of its condition or request any alterations to be made.

On the 28th day of December, 1902, in the morning, the plaintiff was engaged in feeding the said mangle, standing on the left hand side as she had been accustomed, and another young woman was feeding at the right hand side thereof. While so engaged, the left hand of the plaintiff was in some manner carried between the cylinder and the first roller and so injured that amputation thereof became necessary. The manner of the said accident was thus stated in the testimony of the plaintiff herself:

A. "Why, the morning of the accident nearly every piece we put in the mangle, Miss Cumberland's end would go in before mine and I would have to push, and my hand caught on. . . . A. The morning of the accident nearly every piece would catch on Sydney's side before it would catch on mine; and the table cloth would take my hand right on up with it. It dropped down between the board and the cylinder, and when it caught, it carried my hand right on up with it. . . . A. Well, the linen would drop down between the board and the cylinder and you had to push it up. Q. Do you mean us to understand that you put your hand deliberately inside this finger guard and down into the space between the feed board and the cylinder? A. No, sir. Q. How did the linen drop? A. The linen instead of going in would drop down between the board and the cylinder and you would push it up, and the young lady working on the other side, hers would catch before mine. Q. You had to get hold of the end in some way to push it up? No, sir; you had to push it up the feed board. Q. If the edge of the linen you were feeding had dropped down between the feed board and the cylinder, how could you push it up? A. You could push it up and it would come down wrinkled. Q. If it had dropped down between the feed board and the cylinder, how could you push it up? A. It dropped down between the feed board and the cylinder, and when you pushed it up and it came out of the mangle it would come out wrinkled. Q. You did not hold the table cloth as it fed into the machine? A. Yes, I had hold of the table cloth. Q. You pushed the table cloth over the feed board; but you could not catch hold of it, as a matter of fact? A. I had hold of the table cloth and was pushing it up and it dropped. And this day it was worse; every piece we put in it dropped down and we had to push it up; and as I pushed it up in some way or other it took my hand with it. Q. You say it was getting worse? A. Yes. We had to sprinkle the clothes every day, and this day we had to sprinkle the clothes more than ever. Q. And that is the only day you put your hand inside the finger guard? A. Yes. Q. Why did you put your hand inside then? A. I didn't put my hand inside. The table cloth pulled it in. My hand was on the table cloth pushing it up, and the table cloth caught and it caught my hand with it. Q. On this particular occasion even you didn't push your hand inside the finger guard? A. No, sir; I didn't put my hand under the finger guard until the table cloth pulled it under. Q. So the table cloth had hold of your hand before your hand had gotten past the finger guard? A. The table cloth dropped and I gave it another push to make it catch and after it dropped it caught it on the cylinder and carried my hand right with it. Q. So that your hand had gone past the finger guard before the table cloth caught it and carried it into the mangle? A. The table cloth took my hand right along with it. Q. What I want to find out is the exact time that this table cloth became wrapped around your hand in such a way as to take it into that mangle? A. The table cloth dropped. Sydney's end had gone in and my end had dropped, and I pushed it and it caught. As soon as the table cloth—it caught and after it caught in some way it took my hand right up with it. Q. Where did it drop? Between the feed board and the cylinder? A. Between the feed board and the cylinder. Q. And it was not until after it dropped that your hand was caught? A. It dropped between the feed board and the cylinder, and I had my hand on the feed board to make it catch, and my hand caught and went right up with it.

No other evidence was given upon either side as to the cause and manner of the accident, and it did not appear that any other person had

Digitized by Google

observed the position of the plaintiff's hands, or the condition of the cloth before or at the time when her hand went under the finger guard.

The plaintiff offered further evidence tending to show that, upon the occurrence of the accident, the machinery was stopped, the roller lifted, and her hand taken out. It was found that the edge of the table cloth, which was the article in process of mangling when the accident occurred, had been folded back over the fingers and was clasped in the palm of the hand.

The plaintiff offered further evidence of experts in the conduct of laundries and in the operation of laundry machinery to the effect that the sole purpose of the finger guard was to prevent the fingers of the operator from coming in contact with the cylinder and that the same could be so adjusted as to prevent such accident; that there was no kind of laundry work which required an adjustment of the guard at more than half an inch above the feed board; and that an elevation of three-quarters of an inch would lessen its value as a guard.

The defendant offered evidence tending to show that the mangle was of a standard and approved pattern, being considered the best of some half dozen leading "makes." That the machinery of the laundry was under the management and control of an experienced and competent superintendent and a foreman. That a daily inspection was made by the superintendent to see if the machinery was in thorough repair. That the feed board had been securely bolted some weeks before. That the operators were accustomed to pushing the linen with their fingers instead of the palms of their hands, which offered better control of the wet linen and prevented the hands from going under the finger guard. That the finger guard had been adjusted at a height of one and one-half inches when the mangle was installed and had so remained. That this adjustment was best adapted to the work of the laundry, a lower adjustment causing the wrinkled edges of the half dried heavy work to catch the finger guard and turn over. That the finger guard was securely bolted and painted red so as to serve as a warning not to put the hands underneath, and was in full view of the operators. That no complaint had ever been made by plaintiff and no dissatisfaction expressed. That the finger guard was 3 or 4 inches from the cylinder and 6 or 7 inches from the point where the first roller meets the cylinder. That the finger guard was capable of an adjustment of from 1 to 4 inches to suit the various styles and character of the work. That aside from the finger guard the heat of the steam cylinder would indicate danger, and from point of first contact therewith it was 3 or 4 inches to the point where there was friction sufficient to overcome the slightest effort at withdrawal. That from where the operators stood they could see plainly over the rail of the finger guard how far it was to the revolving cylinder which was in plain sight and less than 2 feet distant from where the operators stood.

The only substantial conflict between this evidence and that of the plaintiff is in respect of the capacity of the adjustment of the finger guard. Plaintiff's evidence tended to show that the space of the opening could be reduced to one-fourth of an inch.

The rule of law is well settled that it is the duty of the employer to provide suitable and reasonably safe machinery and appliances for the use of his employee, and that this duty can not be avoided by entrusting its performance to some other employee. Patton v. T. & P. Ry. Co., 179 U. S. 658, 664, and cases cited.

Notwithstanding this duty rests upon the employer, there is no guaranty by him that the machinery and appliances provided are absolutely safe. Patton v. T. & P. Ry. Co., supra; W. & G. Ry. Co. v. McDade, 135 U. S. 554, 570; S. P. Ry. Co. v. Seley, 152 U. S. 145, 153; Asphalt Co. v. Mackey, 15 App. D. C. 410, 423: 28 Wash. Law Rep. 35.

Therefore, when an injury is received by an employee, while working with the machinery or appliances provided for his operation or use, the fact of accident carries with it no presumption of neglect of duty on the part of the employer, as in the case of a passenger; for example, where there is a contract for safe carriage, and the burden rests upon the employee to show such negligence as an affirmative fact. "It is not sufficient for the employee to show that the employer may have been guilty of negligence; the evidence must point to the fact that he was. And where the testimony leaves the matter uncertain and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half a dozen causes and find that the negligence of the employer was the real cause, when there is no satisfactory foundation in the testimony for that conclusion. If the employee is unable to adduce sufficient evidence to show negligence on the part of the employer, it is only one of the many cases in which the plaintiff fails in his testimony, and no mere sympathy for the unfortunate victim of an accident justifies any departure from settled rules of proof resting upon all plaintiffs." Patton v. T. & P. Ry. Co., 179 U. S. 658, 663.

The testimony of the plaintiff herself, and there was no other as to the immediate cause of the accident, lacks directness and certainty; and one can hardly escape the conclusion that she was not paying sufficient attention at the time to be able to say whether, as a matter of fact, it was due to the unsafe adjustment of the finger guard, or to her own careless handling of the cloth which she was engaged in pushing into contact with the revolving cylinder.

But assuming the soundness of the contention on her behalf, that her hand could not have been carried between the cylinders at all, if the finger guard had been so adjusted as to leave a space not exceeding one-half an inch, of which adjustment it was capable, instead of the actual space of one and one-half inches; and assuming also the truth of the testimony offered on her behalf tending to show that a space not exceeding one-half of an inch was ample for the proper operation of the mangle under all conditions, we are of the opinion that the court was right in directing a verdict for the defendant.

Digitized by Google

It plainly appears from the testimony of the plaintiff that she was 22 years of age at the time of the accident, and it must be presumed that she was possessed of ordinary intelligence. She had had about two years experience in operating mangles in other laundries before entering the service of the defendant. These, however, had all been equipped with finger guards adjusted so low as to prevent the operators' fingers from coming in contact with the cylinders which engaged each other a few inches beyond. She entered defendant's service in May, 1902, had been assigned to duty as one of the operators of this mangle in October, and sustained the injury December 28 of the same year.

The space left in the adjustment of the finger-guard, assuming it to have been unusual and unnecessary, as well as dangerous, was unhidden and plainly visible. It was immediately under the plaintiff's eyes and in close proximity to her finger ends when she was constantly employed in pushing the cloth which passed under it into engagement with the ironing cylinders. It is inconceivable that this adjustment could have escaped the observation of the plaintiff during more than two months of this constant employment. Under such circumstances she must be presumed to have had knowledge of a condition which would necessarily have become known through the ordinary exercise of her faculties. The defect being obvious to one of plaintiff's intelligence and experience, the defendant was under no duty to instruct her in the performance of her services, or to correct it in the absence of any complaint or request made by her.

The doctrine of law is established beyond question, that where an employee undertakes and continues the use of defective and unsafe appliances, either with actual notice of such defect, or where the same is open to ordinary observation in the usual course of its use, he must be deemed to have accepted the risk of all danger reasonably to be apprehended from such use, and can not recover of his employer. S. P. Co. v. Seley, 152 U. S. 145, 155; W. & G. R. R. v. McDade, 135 U. S. 554, 570; T. & P. Ry. Co. v. Archibald, 170 U. S. 665, 673; Hayzel v. Railway Co., 19 App. D. C. 359, 371: 30 Wash. Law Rep. 198; Crowley v. Pacific Mills, 148 Mass. 228.

In the following cases, all of which were actions for injuries sustained by employees in the operation of mangles, recoveries were denied under the application of this doctrine to facts and circumstances of the same general nature as those shown in the case at bar. Connolly v. Eldridge, 160 Mass. 566, 570; Blow v. Yellowstone Park Asso., 86 Minn. 237, 239; Kennan v. Waters, 181 Pa. St. 247.

For the reasons stated the judgment must be affirmed, with costs; and it is so ordered.

Affirmed.

Attorney and Client—Liability of Client for Act of Attorney.—A client, having placed a claim in the hands of his attorney for collection, held liable for damages sustained by the latter's wrongful act in causing an execution on a judgment recovered to be issued and levied in violation of the stay.—Barber v. Dewes, 91 N. Y. Supp. 1059.

Court of Appeals of the District of Columbia.

MATILDA S. VOGT, ETC., APPELLANT,

v.

SOPHIA VOGT ET AL.

WILLS; REMAINDERS; RULE IN SHELLEY'S CASE; INTENTION OF TESTATOR.

1. Where a present interest in remainder, though to be enjoyed in futuro, passes under the will to a certain and definite person, the remainder is a vested one.
2. The rule in Shelley's case will not apply where one of the estates attempted to be created is equitable and the other legal.
3. A trust estate is not to continue beyond the period required for the purposes of the trust.
4. Where a testator directed that at a certain time after his death the residue of his real estate should be sold and the proceeds divided among his heirs, share and share alike, and paid over to them at once, except that the share of one son should be paid to trustees to be invested by them, the income to be paid to the son, the principal to be paid to his heirs after his death, *held* that the trust being limited to the life of the son, the remainder to his heirs is a legal estate, and therefore the rule in Shelley's case, even if applicable to personal estate, did not apply, and the son took only an equitable estate for life in the income, the legal estate in remainder being vested in his heirs.
5. The tendency of the courts is to deny the application of the rule where the intent of the testator has been made to appear so plainly to the contrary that no one could misunderstand it.
6. *Held*, that the direction for a sale of the real estate having effected an equitable conversion, and the plain intention of the testator being that the son should have only a life estate in the income, the word "heirs" in the bequest in remainder should be construed as meaning children or next of kin, or those who would take under the statute of distributions, and the rule in Shelley's case is not applicable.

No. 1520. Decided June 13, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,547, in suit for the construction of a will. Reversed.

Mr. Leon Tobriner for the appellants.

Mr. John C. Gittings for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The bill in this case was filed by certain of the children of John L. Vogt to obtain a construction of the latter's will, and for some other purposes which it seems have been accomplished by settlement or otherwise and need not be mentioned.

The defendants are Charles Graff and Frederick C. Gieseking, executors and trustees named in said will, and Matilda S. Vogt, the infant daughter of one of the complainants, Frederick H. Vogt.

The testator, John L. Vogt, died seized and possessed of a large estate. After certain specific devises and bequests the following disposition was made of the residue: "All the rest and residue of my real estate shall, when my youngest surviving child attains the age of 21 years, or one year thereafter in the discretion of my executors, be sold by my executors at public auction, after due notice in the newspapers of this city. The proceeds of said sales shall be then divided among my heirs, share and share alike, and paid over to them respectively at once, except the share coming to my son, Fred H. Vogt. Said share shall be paid

Digitized by Google

to Charles Graff and Frederick C. Gieseking, as trustees, by them invested, the income therefrom to be paid said Fred H. Vogt, the principal to be paid to his heirs after his death." The single controversy is over the construction of this provision, and is between Frederick H. Vogt and his infant child, Matilda S. Vogt. The question is whether the former takes the absolute estate, or only the income thereof for life with remainder to his said daughter. The decree of the equity court sustained the contention of the father, and has been appealed from by the daughter.

The contention on behalf of Fred H. Vogt that he took an absolute estate under the residuary clause of the will aforesaid rests on the application to its provisions of the rule in Shelly's case. That famous rule has been defined and elucidated by Chief Justice Alvey, speaking for this court in Sims v. Georgetown College, 1 App. D. C. 72, 79: 21 Wash. Law Rep. 595, in the following words: "Where, in the same instrument, the ancestor takes an estate of freehold, with remainder mediately or immediately to his heirs, the word heirs is a word of limitation of the estate, and not of purchase; or in other words, that such remainder vests in the ancestor himself, and the heirs when they take, take by descent from him, and not as purchasers from the grantor or devisor. Thus, if the limitation be to his heirs in general a fee simple is given to the ancestor; if to the heirs of his body, he takes a fee tail, according to the common law. . . . And the rule is equally applicable to the limitations of equitable as to legal estates; but the estate of the ancestor and the limitation to the heirs must be of the same quality, that is, both must be legal or both equitable. The same words that create an estate in fee simple or an estate in fee tail in legal estates, will, when applied to an equitable estate create an estate in fee simple or in fee tail in that estate." See, also, Green v. Green, 23 Wall. 486, 488; Croxall v. Sherred, 5 Wall. 268, 282.

There can be no doubt that the real intention of the testator was that Fred H. Vogt should take nothing more than a life estate in the designated share; that is, the income thereof during his life, and that the same should then pass into the possession and enjoyment of his children or next of kin; and the question is whether the expression of this intention is so inconsistent with the aforesaid rule as to be completely thwarted thereby? The real estate having been directed to be converted into money is to be regarded as if it were money at the time of the testator's death. Cropley v. Cooper, 19 Wall. 167, 174. Both parties concur in this view.

While the rule in Shelly's case is perhaps a logical result of the ancient doctrine of feudal tenure, and is, therefore, peculiarly applicable in the construction of grants and devises of land, it may be assumed, also, for present purposes, but without expressly so deciding, that it is equally applicable to grants and bequests of personal property. Under the statement of the rule, as we have seen, in order that the two estates attempted to be created shall coalesce, they must be of the same quality; that is, both must be legal or both equitable. If the one be equitable and the other legal the rule will not apply.

The life estate here being equitable, the application turns upon the contention of the appellees that the estate in remainder is likewise an equitable one.

The remainder is a vested one, because a present interest, though to be enjoyed in futuro, passes under the will to a certain and definite person. Poor v. Considine, 6 Wall. 458, 474. In the same case it is said: "It is a rule of law that estates shall be held to vest at the earliest possible period, unless there be a clear manifestation of the intention of the testator to the contrary." And the rule is the same where the subject-matter is personal property. Gibbens v. Gibbens, 140 Mass. 102, 105.

Bearing this in mind, we are of the opinion that the appellees' contention must be denied. The devise or bequest to the trustees was to them without the addition of their heirs, etc., and their active duties were expressly limited to the life of Fred H. Vogt. Had there been no conversion of the devised estate into personalty, the vested remainder would be a legal estate, because the use would be executed in the heirs. Ware v. Richardson, 3 Md. 505; Green v. Green, 23 Wall. 486, 491; Croxall v. Sherred, 5 Wall. 268, 282.

It may be conceded that the Statute of Uses, in force in Maryland and the District of Columbia, does not operate in the case of personal property. But a like result is accomplished by another well-established principle, namely, that a trust estate is not to continue beyond the period required by the purposes of the trust. Poor v. Considine, 6 Wall. 458, 471. As said in that case by Mr. Justice Swayne: "This doctrine rests upon a solid foundation of reason and authority, irrespective of the presence or absence of the Statute of Uses." See also Young v. Bradley, 101 U. S. 782, 787; Potter v. Couch, 141 U. S. 296, 309; Wilkes v. Wilkes, 18 App. D. C. 90, 96: 29 Wash. Law Rep. 261; Smith v. Sullivan, 20 App. D. C. 553, 557: 31 Wash. Law Rep. 2; Long v. Long, 62 Md. 33, 64, 66. In the case last cited it was said by Chief Justice Alvey, who delivered the opinion of the court: "And in regard to personalty, the principle is, that when a trust has been created, and all purposes of the trust have ceased, or at an end, the absolute estate is in the person entitled to the last use, unless there is an apparent intention to the contrary." See, also, Denton v. Denton, 17 Md. 407; Owen v. Crow, 62 Md. 491, 494; Hooper v. Falgner, 80 Md. 262, 272; Mercer v. Safe Dep. Co., 91 Md. 102, 117; Bacon's Appeal, 57 Pa. St. 504, 514.

Instead of there being "an apparent intention to the contrary" in this case, the testator expressly limited the trust to the life estate. No exercise of discretion is required of the trustees thereafter; they are not even required to make partition. Their active duties cease with the life of Fred H. Vogt. The trust is ended thereby, and all that they are required to do is to pay over the principal at once.

The trust being expressly limited to the life estate of Fred H. Vogt, the remainder to the heirs is a legal estate, and hence there can be no union of the two estates under the rule in Shelly's case.

Digitized by Google

Bacon's appeal, supra, is directly in point. Both real and personal property were vested in trustees by the will, the income thereof payable to a daughter during life, if she died leaving a husband income to him for life, and from and after the decease of the daughter and her husband, respectively, her share to "go to her right heirs forever." It was held that the life estate being equitable and the remainder legal, there was no merger.

Mr. Justice Strong, delivering the opinion of the court, said: "The cestui que trust being entitled to the whole beneficial enjoyment, and the trustees having no right to interfere with it, no reason is apparent why a legal title should be held continuing in the latter. A severance of the legal right from the beneficial ownership is not to be maintained without some reason. In the case before us the purpose of the trust was accomplished when Mrs. Bacon died. The testator did not intend that the trustees should hold any estate after her death. He contemplated its immediate transmission to the remaindermen, a transmission by conveyance, indeed, but no holding in trust for those in remainder. There was, therefore, nothing substantial to be secured by treating the legal estate as remaining in the trustees, and only an equitable interest in Mrs. Bacon's heirs. . . . The direction to the trustees to convey after the termination of the trust does not continue the legal title in them and make them trustees of the persons to whom they are directed to convey." The foregoing had application to the real estate, but it was also said that the same rule applied in the case of the personal property under the same trust. To the same effect, Mannerback's Estate, 133 Pa. St. 342, 350.

Thus far we have dealt with the case upon the lines chiefly pursued in the argument before us. But we think that the decision can be rested upon another ground, the consumption of space in the statement of which is justified by the importance of the case.

The subject-matter involved is personal property, and as we have before said the rule in Shelly's case is peculiarly applicable to grants and devises of real estate. Daniel V. Wharteney, 17 Wall. 639, 642; 4 Kent. 216. Assuming that it also applies to personal property, yet the courts, guided by the cardinal principle that the intention of the testator shall govern where possible, have always been more anxious to support limitations of personal property than of realty. Bacon's Appeal, 57 Pa. St. 504, 514.

As has been said before, no one can doubt what the real intention of the testator was in making this will. Now, while the intention will be unavailing, especially in the case of real property, to exclude the application of the rule where the technical language used is directly within its application, still, "if there are explanatory and qualifying expressions, from which it appears that the import of the technical language is contrary to the clear and plain intent of the testator, the former must yield, and the latter must prevail. The rule is one of property and not of construction." Daniel v. Wharteney, 17 Wall. 639, 643. The tendency has always been, and is now more marked than ever, to deny the application of the rule "where the intent of the testator has been made to appear so plainly to the contrary that no one could misunderstand it." Poole v. Poole, 3 Bos. & Pul. 627; Featherston v. Featherston, 3 Cl. & Fin. 67, cases cited and quoted from in Sims v. Georgetown College, 1 App. D. C. p. 81. The word share as used in the clause under consideration is a mere designation of the ratio of division in order to make the same certain. The shares, in that sense, of the remaining children are to be divided among and paid over to them immediately upon the actual conversion of the lands into money; while in the case of Fred H. Vogt, not the share but the income thereof only is to be paid to him during his life. The share is never to come into his possession at all. In directing the principal to be paid over after the death of Fred H. Vogt, had the testator used the appropriate words, children, or next of kin, or the like, instead of heirs, this controversy might have been avoided. Most likely, the testator had no apprehension of the conversion worked by his positive direction to sell the real estate; and had there been no conversion, the word "heirs," commonly understood by persons, like him unlearned in the law, as meaning those who take both real and personal estate in case of intestacy, would be the appropriate one. In that event, as we have seen, the use would have been executed in the heirs, and their estate in remainder would be a legal one which would not coalesce with the equitable life estate. As there was an equitable conversion, however, and in view of the plain intention of the testator, we are of the opinion that the word "heirs" must be construed as meaning children or next of kin, or those who would take as distributees under the statute. "When the word heir is used in gifts of personalty it should primarily be held to refer to those who would be entitled to take under the statute of distributions." Sweet v. Dutton, 109 Mass. 589, 591, and cases therein cited. See, also, Tillman v. Davis, 95 N. Y. 17, 24; Johnson v. K. of H., 53 Ark. 255, 260; Ashton's Estate, 134 Pa. St. 390, 395; Evans' Estate, 155 Pa. St. 646, 649; Schouler on Wills, section 542.

By taking this view effect is given to the manifest intention of the testator, a result which all courts seek to accomplish if possible.

The decree will be reversed, with costs, and the cause remanded for further proceedings not inconsistent with the foregoing opinion. It is so ordered.

Reversed.

Note—Negotiability—Definite Amount.

The Supreme Court of Minnesota held, in the case of Loring v. Anderson, that it is an essential condition of a promissory note that there be no uncertainty as to the amount of money that it calls for at any particular time, but if the promise be to pay a stated sum of money, plus or minus a definite amount or discount, the amount called for by the note is certain, and that a written instrument whereby the maker promised to pay on October 1, 1903, to the order of the payee, $250 with interest, a discount of 6 per cent to be allowed if paid on or before October 1, 1903, was not uncertain as to amount, and was a promissory note and therefore negotiable.

Digitized by Google

Court of Appeals of the District of Columbia.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS, ETC., APPELLANTS,

v.

LORIN M. SAUNDERS.

PRACTICE; VOID ORDER OR DECREE; POWER OF COURT TO VACATE.

1. A court has power to open or vacate a judgment or decree after the expiration of one or more terms, if such judgment or decree be void.
2. Where exceptions filed to the verdict of the jury in a street extension proceeding were overruled by the court, and an order passed confirming the verdict and award, such order is void, for the reason that the filing of the exceptions made if necessary for the municipal authorities, if they desired to proceed with the work, to cause the summoning of a second jury, as required by sec. 263, R. S. D. C., and being void, the court has power, notwithstanding the lapse of one or more terms, to vacate and set it aside, in so far as it affects the lands of the party excepting.

No. 1495. Decided April 18, 1905.

APPEAL by the Commissioners of the District of Columbia from an order of the Supreme Court of the District of Columbia, sitting as a District Court (District Court, No. 555), vacating an order confirming a verdict, etc., in re extension of Sherman avenue. Affirmed.

Mr. A. B. Duvall and *Mr. A. Leftwich Sinclair* for the appellants.

Mr. Leo Simmons for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal by the Commissioners of the District of Columbia from an order made by the Supreme Court of the District of Columbia, sitting as a District Court, setting aside, vacating, and annulling an order confirming a verdict, award, and assessment in re extension and widening of Sherman avenue, entered and filed October 2, 1901.

The record discloses that the Commissioners of the District of Columbia were directed by section 5 of an act of Congress approved March 3, 1899, entitled "An act for the extension of Pennsylvania avenue southeast, and for other purposes" (30 Stat. 1381), to institute by a petition in the Supreme Court of the District of Columbia, sitting as a District Court, a proceeding to condemn the land necessary for the extension and widening of Sherman avenue from Florida avenue to Whitney avenue with the uniform width of 100 feet.

Agreeable to the provisions of said act, the Commissioners of the District of Columbia, on the 31st day of May, 1899, filed a petition in the Supreme Court of said District, sitting as a district court, praying that the court direct the marshal of the District of Columbia to summon a jury of seven judicious, disinterested men, not related to any party interested, to be and appear on the premises on a day specified, to assess the damages, if any, which each owner of land through which Sherman avenue was to be extended and widened would sustain by reason of such extension and widening, and that such other and further orders might be made and proceedings had as were contemplated by said act of Congress and by Chapter XI of the Revised Statutes of the United States relating to the District of Columbia, to the end that a permanent right of way for the public over the aforesaid land might be obtained and secured for the extension and widening of Sherman avenue.

Upon consideration of this petition the said court, on the 16th day of September, 1899, passed an order requiring all persons interested to appear in said court on or before the 2d day of October, 1899, and show cause why the prayer of said petition should not be granted and why the proceeding directed in said act of Congress should not be taken. Pursuant to such order a jury was summoned, impaneled, and sworn, and thereafter proceeded in accordance with the provisions of said Chapter XI of the Revised Statutes of the United States relating to the District of Columbia; and having been upon the premises, the said jury, on the 1st day of May, 1900, made out their written verdict, which was signed by a majority of the jurors, and on the 9th day of May, 1900, said verdict was filed in said court.

After this verdict was filed, but before any action was taken on it by the court, the act of March 3, 1899, under which the proceedings were being had, was held by this court to be unconstitutional. Wight v. Davidson, 16 Appl. D. C. 371: 28 Wash. Law Rep. 302. From such decision an appeal was taken to the Supreme Court of the United States, which, in May, 1901, handed down its decision holding that the act was constitutional. Wight v. Davidson, 181 U. S. 371: 29 Wash. Law Rep. 290. Thereupon proceedings were resumed in the Supreme Court of the District and an order nisi confirming the verdict and requiring all interested parties to appear and show cause on a day certain why such verdict should not be finally ratified and confirmed by the court. In response to such order this appellee on July 22, 1901, filed the exceptions to the verdict which will later on be referred to. An order, after argument by counsel, and consideration by the court, was entered overruling the exceptions and finally ratifying and confirming the verdict, award, and assessment in all respects. From this order an appeal was taken by appellee to this court October 22, 1901. For reasons unnecessary to be stated the appeal was not prosecuted by this appellee, who, however, on October 13, 1903, filed a motion in the cause praying that the order of October 2, 1901, confirming the verdict in so far as it affected his property be set aside and vacated, and for such other and further relief as the nature of the case might require. The petition upon which the motion was based purports to have been verified July 23, 1903. At the time of filing the motion notice was given the counsel for the District that the court would be asked on October 15, 1903, to dispose of the exceptions, and the clerk of the court was requested to enter the appeal in the case as withdrawn. The motion came on for hearing, and, after argument, the court below, on August 16, 1904, decreed that the judgment or decree of October 2, 1901, be vacated and annulled, in so far, and only so far, as it applied and affected the assessments for benefits against the lands belonging to the appellee. The decree contained this proviso: "This decree, however, to be without prejudice

Digitized by Google

to any right the petitioners, the Commissioners of the District of Columbia, may have to proceed further, under and in accordance with the opinion of the Court of Appeals, in the cases of Brown et al. vs. Macfarland et al., and Todd et al. vs. Macfarland et al., which appeals were taken from said decree of October 2, 1901."

The assignment of errors upon which this appeal is to be considered are as follows:

1. In not overruling and denying the petition or motion filed by appellee on October 13, 1903.

2. In holding that the order passed on the 2d day of October, 1901, confirming the verdict of the jury, was null and void.

3. In vacating and setting aside said order in so far as it affected the appellee's property.

4. In declaring the assessments levied against appellee's property illegal, null, and void.

These exceptions in reality present but one question for our consideration, and that is as to the power of the court below to vacate the order of October 2, 1901. If that order be held to be void it will be found to be unnecessary to consider certain questions raised by appellants as to the laches of the appellee, and the effect of appellee's alleged collection of the damages awarded him in these very proceedings. In any event, however, the latter question need not be passed on, for the record is silent on the subject and we can not go outside of it. As to the question of laches it seems to be conceded by appellants that a court has power after the expiration of one or more terms at which a judgment or decree was entered to open or vacate it if such judgment or decree be void. If, therefore, the order or decree herein which was vacated and set aside was void, by reason of the absolute right of appellee to have a new jury summoned, should he so elect, and he properly exercised and made known his desire by filing his exceptions, then this case is within narrow bounds. In view of the prior decisions of this court relating to the very same order or decree of October 2, 1901, we are constrained to hold that the court below committed no error in making the decree or order of August 16, 1904, which is here complained of.

In Brown v. Macfarland, 19 Appl. D. C. 525: 30 Wash. Law. Rep. 235, this court, in referring to the very same proceedings in which the decree or order of October 2, 1901, was entered, said: "The whole proceeding is strictly statutory, and it must be affirmatively shown that all the provisions of the statutes that apply to the proceedings have been substantially complied with. Otherwise the whole proceeding would be void and without effect." Were all the provisions of such statutes substantially complied with? If not under the authority of the case last referred to we must hold that the decree or order of October 2, 1901, was not merely voidable, but void, by reason of the fact that is not controverted that a second jury of twelve was not summoned as required by the statute applicable to the proceeding. The facts being as stated, we find that the court has clearly stated the fatality of the omission to summon the jury in Brown v. Macfarland, supra, which was followed in Todd v. Macfarland, 20 Appls. D. C. 177: 30 Wash. Law Rep. 423. In the latter case the court quoted, with approval, what had been said in the former, "that upon the filing of the exceptions to such verdict" (being the same verdict to which this appellee filed his exceptions) "it at once became the duty of the authorities, if they desired to proceed in the work of condemnation, to order the marshal to summon a jury of twelve, as directed by section 263 of chapter 11, Rev. Stats. United States, relating to this District; and that there was no duty resting upon the exceptants to demand a jury of twelve to be summoned, but it was the duty of the Commissioners to take such action." That being so, this appellee, having filed his exceptions, was under no obligation to do more. No second jury having been caused to be summoned by the Commissioners, the decree or order of October 2, 1901, could not be enforced against this appellee, and no laches could be predicated against him, no matter how long he waited. He could move to vacate it at any time, or he could wait until an attempt was made to enforce it, and then resist such enforcement so far as it related to his property. For the reasons stated, and upon the authorities cited, the decree was void against this appellee.

A question has been raised as to the sufficiency of the exceptions filed by appellee to entitle him to put upon the Commissioners the burden of having summoned the second jury. Upon examination of the exceptions we find them the same as those filed in Todd v. Macfarland, supra, and we consider their sufficiency has been affirmed by the action of this court.

A further consideration of the contentions of the appellants seems unnecessary. The court below in vacating the former decree reserved the right of the Commissioners to take such further proceedings in the matter in accordance with the opinions of this court in the cases heretofore referred to by us.

In our opinion no error was committed by the court below in vacating the order of October 2, 1901, and the order of August 16, 1904, must therefore be affirmed, with costs. And it is so ordered. Affirmed.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Henry S. Matthews, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Thomas B. Campbell**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 10th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of June, 1905. GEORGE J. EASTERDAY, executor, by Henry S. Matthews, attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,707. Adm. 25-3t

Digitized by Google

Legal Notices.

Lester & Price, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes M. Beuchert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of June, 1905. JOHN A. RUPPERT, 726 9th st. N. E.; LENA BEUCHERT, 722 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,867. Administration. 25-3t

Chas. W. Darr and Alex. Wolf, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Curtis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **20th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of June, 1905. ALEXANDER WOLF, Jenifer Bldg.; CHARLES W. DARR, 707 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,974. Administration. 25-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Hugh Masterson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1905. ALICE E. MASTERSON, 1529 32d st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,303. Administration. 25-3t

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Jane E. Williams et al., Complainants, v. Mary R. Ketner et al., Defendants. Equity No. 25,309.

John L. Cassin, trustee, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lots 4 and 5 in square 62, in the city of Washington, District of Columbia, to M. Frank Ruppert, for the sum of $1,709.70, it is, therefore, this 22d day of June, A. D. 1905, ordered that said sale will be ratified and confirmed on the **10th day of July, A. D. 1905**, unless cause to the contrary be shown on or before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

A. B. Duvall, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James S. Robinson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ANDREW B. DUVALL, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,978. Administration. 25-3t

Legal Notices.

In the Supreme Court of the District of Columbia.

Edward Shoemaker and Elizabeth Shoemaker, Complainants, v. John Curran and Hannah Curran, his Wife; George T. Shoemaker, Jesse Shoemaker, William F. Shoemaker, Isaac W. Shoemaker and Mary Shoemaker, his Wife; Eliza Davison and John F. Davison, her Husband; Ada V. Queen and Frank Queen, her Husband; Margaret E. Fowler and William S. Fowler, her Husband; Nancy R. Shoemaker, Elwood Shoemaker, Frank W. Shoemaker, and George T. Shoemaker, Defendants.

In Equity. No. 12,480.

Upon consideration of the report of John W. Bogley and Samuel H. Bogley, trustees, herein filed, showing that they have sold so much of that tract of land as lies in the District of Columbia, which was conveyed by deed of Clement Cox and others to Jesse Shoemaker, dated the 17th day of November, 1841, and recorded among the land records of the District of Columbia, in liber 1577, at folio 235, et seq., being the same land commonly known as "Friendship," or the "Jesse Shoemaker" tract, containing about twelve and one-half acres, to John T. Meany for five hundred and one dollars ($501) per acre, it is this 22d day of June, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **10th day of July, A. D. 1905**; provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

F. Walter Brandenburg, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Walter Weston**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of June, 1905. EDWARD L. WESTON, by F. Walter Brandenburg, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,148. Administration. 25-3t

Weston Flint, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

Estate of William B. Broun, Deceased.

No. 11,108. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on said estate, by Weston B. Flint, it is ordered this 22d day of June, A. D. 1905, that notice be and hereby is given to **Mrs. Nannie B. Sabine**, and to all others concerned, to appear in said court on **Monday, the 24th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

Alex. Muncaster, Attorney

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary Schnappauf**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ALEXANDER MUNCASTER, 482 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,000. Administration. 25-3t

Digitized by Google

Legal Notices.

Geo. E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Albert T. Salter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. SARAH G. B. SALTER, 1924 I st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,997. Administration. 25-3t

Bendheim & Rothschild, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Michael Dietz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. DAVID ROTHSCHILD, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,962. Administration. 25-3t

Leckie, Fulton & Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Hannah Barnes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. CREED M. FULTON, Fendall Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,921. Administration. 25-3t

S. Herbert Giesy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Mary W. Eveleth**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1905. GUSTAVUS B. MAYNADIER, Executor, by S. Herbert Giesy, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,130. Administration. 25-3t

Andrew Y. Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Bridget Werner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. MARGARET RYAN, 103 Bank st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,928. Administration. 25-3t

Legal Notices.

SECOND INSERTION.

Wm. M. Lewin, Attorney

In the Supreme Court of the District of Columbia.
John Turnbull, Jr., John T. Uthman, Daniel H. Doyle, and Samuel R. Waite, heretofore Copartners trading under the firm name of John Turnbull, Jr., & Co., Plaintiffs, v. Samuel A. Nattans, Defendant.
At Law, Numbered 47,722.

The object of this suit is the recovery from the defendant by the plaintiffs of the amount of a judgment recovered by the plaintiffs against the defendant, April 29, 1903, in the Superior Court of Baltimore city, Maryland, to wit, $829.55, with interest on $819.80 thereof from April 29, 1903, besides the costs of this suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiffs' claim. It is, therefore, this 16th day of June, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in The Washington Law Reporter for three successive weeks. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 24-3t

John M. George, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles B. Hinton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. ELIZABETH HOEKE, 336 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,840. Administration. 24-3t

Thomas P. Woodward and W. Mosby Williams, Solicitors

In the Supreme Court of the District of Columbia.
Georgine Simms et al. v. Elizabeth Taylor et al.
Equity 23,817.

W. Mosby Williams and William C. Martin, trustees, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lot 15 in Corcoran's subdivision in square 587, Washington City, District of Columbia, to William J. Howard, for the sum of $1,870. It is, therefore, this 5th day of June, 1905, ordered that said sale will be ratified and confirmed on the **3d day of July, 1905**, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. By the Court: WENDELL P. STAFFORD, Associate Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

Thomas Walker, Solicitor

In the Supreme Court of the District of Columbia.
Lucy Thornton v. John Thornton and Hattie Geary, alias Hattie Mathews.
No. 24,880. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 8th day of June, A. D. 1905, ordered that the defendant, **John Thornton**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Record. By the Court. WENDELL P. STAFFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

H. Prescott Gatley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James Augustin Greer**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of June, 1905. JAMES W. GREER, EDWARD R. GREER, by H. Prescott Gatley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,284. Admr. 24-3t

THIRD INSERTION.

Walter C. Balderston, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Anna L. Quinban**, otherwise known as **Amy Lathrop**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. JOHN J. O'BRIEN, 1339 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,970 Adm. 23-3t

R. Golden Donaldson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Edward McMahon, Deceased.
No. 12,853. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Ellen McMahon, and summons having been duly issued against Joseph Patrick McMahon and Thomas McMahon, and returned not be found, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Joseph Patrick McMahon and Thomas McMahon**, and to all others concerned, to appear in said court on **Friday, the 7th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Otis B. Bullard, Deceased.
No. 12,965. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration, with will annexed, on said estate, by Henry M. Cutler, it is ordered, this 6th day of June, A. D. 1905, that notice be and hereby is given to the **unknown next of kin**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Legal Notices.

Walter C. Clephane, Solicitor

In the Supeme Court of the District of Columbia.

H. Rozier Dulany, Trustee, v. John W. Pilling, Alan O. Clephane, Eliza Andrews, and the Unknown Heirs, Alienees, or Devisees of Andrew Link.
No. 25,433, Equity Docket.

The object of this suit is to declare the title to the real estate hereinafter described to be good in fee simple in the complainant by adverse possession, subject to the deed of trust in the bill of complaint described, said real estate being described as follows, to wit: the north one (1) foot six (6) inches of sublot thirty (30), and all of sublots thirty-one (31), thirty-two (32), and thirty-four (34), and the north fifty-two (52) feet of sublots thirty-five (35), thirty-six (36), and thirty-seven (37), of Andrew J. Miller's subdivision of lots twenty (20) to twenty-four (24), inclusive, of F. T. Browning, trustee's, subdivision of original lots numbered nine (9), ten (10), and eleven (11), in square numbered eighty-four (84), in the city of Washington, D. C., as said Miller's subdivision appears of record in book numbered twenty (20), at page 48 of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, by Walter C. Clephane, his solicitor, it is, this 12th day of June, A. D. 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Andrew Link, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

John R. Shield, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bridget Reardon, Deceased.
No. 12,611. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Edward J. Duffy, it is ordered this 14th day of June, A. D. 1905, that notice be and hereby is given to **Annie Connell, Kate Philpot Elliott, and Hannah Philpot Smith**, and to all others concerned, to appear in said court on **Monday, the 17th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-3t

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Emma L. Elliott et al., Complainants, v. William Prout et al., Defendants.
No. 25,317. In Equity. Doc. 56.

The object of this suit is to establish of record the title of the complainants in fee simple by adverse possession to all of original lot numbered seven (7) in square numbered one thousand (1,000), improved by the two (2) dwellings, 1240-1242 on Eleventh street southeast, in the city of Washington, District of Columbia. On motion of the complainants, it is this 14th day of June, A. D. 1905, ordered that **William Prout, William King, and William Prout, Jr.**, or their respective unknown heirs, alienees, and devisees (if they be dead), cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order; good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-3t

Digitized by Google

Legal Notices.

B. P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward C. Halliday**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. HENRIETTA M. HALLIDAY, 1814 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,877. Administration. 24-3t

---

Philip Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Lucinda Bailey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,929. Administration. 24-3t

---

A. A. Hoehling, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel H. Griffith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WARREN G. GRIFFITH, 641 Land Title Building, Philadelphia, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,914. Adm. 24-3t

---

Hallam & Hallam, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George Fouse**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. PATTY C. H. FOUSE, 7 Ledyard Place, Newport, R. I. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,861. Administration. 24-3t

---

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Magdalina Tugitt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. JOHN P. HINKEL, 119 C st. S. E.; HENRY E. TRIPP, 410 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,937. Admin. 24-3t

Legal Notices.

Chase Roys, Solicitor

In the Supreme Court of the District of Columbia.

Daisy E. Belt v. King Wilson Belt.
Eq. No. 22,898. Eq. Doc. 51.

The object of this suit is to obtain a divorce from the bond of marriage. On motion of the complainant it is this 23d day of January, 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. (Signed) THOS. H. ANDERSON. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 24-3t

---

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Ann Slight**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. FLOYD E. DAVIS, 7th and E sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,656. Administration. 24-3t

---

F. S. Bright, Attorney

In the Supreme Court of the District of Columbia,
Holding the Probate Court.

In the Matter of the Estate of Samuel Thomas Labby, Deceased. No. 12,988.

Application having been made to the Supreme Court of the District of Columbia, holding the Probate Court, by Gustavus E. Labby and Morris H Labby, brothers of the decedent, for the granting of letters of administration on said estate to F. S. Bright, it is ordered this 13th day of June, 1905, that notice be and hereby is given to **Ella Cabell Miller, daughter of, and Robert, Brandon, Lewis, William, Joyce, Garnett, and Nannie, grandchildren of Mary Joyce Neville; H. Denison Cole, Francis and Walter Denmead, Harold and Florence Denmead, Margaret and Elizabeth Amos, and any other unknown heirs at law and next of kin of said Samuel Thomas Labby, deceased**, and to all others concerned, to appear in said court on **July 17, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Baltimore Sun once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 24-3t

---

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Jennie R. Willoughby et al., Complainants, v. Philip H. Mires et al., Defendants. No. 25,437. Equity Docket 56.

The object of this suit is to establish the title of the complainant to original lots 11 and 12 in square 61 in the city of Washington, District of Columbia, to be good in fee simple in the complainants by adverse possession. On motion of the complainants, by Barnard & Johnson, their solicitors, it is by the court, this 14th day of June, A. D. 1905, ordered that **Philip H. Mires, Philip Meyer, George Burnes, Christian Hines, Michael Myers, Matthew Hines**, and **William Robertson**, or if they be dead, their unknown heirs, alienees, and devisees, and each of them, cause their appearance to be entered herein on or before the first rule day occurring forty (40) days after the first publication of this order, exclusive of Sundays and legal holidays; otherwise this cause will be proceeded with as in case of default. The court is satisfied by good cause shown by the affidavit filed herein that it is not necessary that this order should be published at least twice a month during the period of not less than three (3) months. This order shall be published once a week for four (4) successive weeks before said rule day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

Digitized by Google

Legal Notices.

Wm. L. Pollard and Mason N. Richardson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frank Marrow**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. WILLIAM L. POLLARD, 609 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,951. Administration. 23-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of Allegheny City, Pa., has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Elbert Clagett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1905. LAVINIA E. CLAGETT, care Smith Thompson, Jr., Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,953. Administration. 23-3t

John Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia.
Champe B. Thornton et al. v. Jennie T. Powers et al.
Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, herein filed, it is, this 2d day of June, A. D. 1905, ordered by the court that said trustee be, and he is hereby, authorized to accept the offer of Carl C. King, to purchase for $1,000 lot 8 in block 8, and also the offer of Harry C. Fisk to purchase for $600 lot 1 in block 13, both of said lots being in Grammer's addition to Takoma Park, recorded in county book 7, page 112, in the office of the surveyor of the District of Columbia, and included in the decree of sale in the above-entitled cause, and further that said sales of said lots be ratified and confirmed by the court unless cause to the contrary be shown on or before the 2d day of July, A. D. 1905. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

W. H. Sholes, Solicitor

In the Supreme Court of the District of Columbia.
George Winsmore v. Samuel G. Thompson et al.
Equity, No. 25,323. Docket No. 56.

The object of this suit is to remove cloud on complainant's title to east one-half of lot 23 in Wright & Cox's subdivision of part of Pleasant Plains, in the District of Columbia. On motion of the complainant, it is, this 5th day of June, A. D. 1905, ordered that the defendant, **Samuel G. Thompson**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published in The Washington Times and The Washington Law Reporter once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

R. E. Paire and John J. Brosnan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William G. Phillips**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1905. CHARLOTTE E. PHILLIPS, 1732 Connecticut Ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,957 Administration. 23-3t

Legal Notices.

Douglass & Douglass, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Balddy Ashbourne Capehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of June, 1905. FANNY CAPEHART, care of Douglass & Douglass, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,854. Adm. 23-3t

Julius I. Peyser and Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Herman Baumgarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. ADA BAUMGARTEN, 466 Mass. ave. N. W., ARTHUR BAUMGARTEN, 414 10th st. N. W. Attest: JAMES TANNFR, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,977. Administration. 23-3t

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Bernard H. Johnston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of June, 1905. JAMES M. JOHNSTON, WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,786. Administration. 23-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Norton Frank**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, A. D. 1965. EMMA R. ELIAS, care Geo. F. Williams, 606 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,954. Administration. 23-3t

F. D. McKenney and J. S. Flannery, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscribers, of the State of New York and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice L. Cilley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of June, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of June, 1905. HARRIET C. RUSSELL, 21 West 11th st., New York City; EMMA CILLEY, 1539 I st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,913. Adm. 23-3t

Digitized by Google

Legal Notices.

G. Percy McGlue, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel M. Ryan, Deceased.
No. 12,922. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James Ryan, it is ordered this 8th day of June, A. D. 1905, that notice be and is hereby given to **Johanna Carew**, of Tipperary, Ireland, and to all others concerned, to appear in said court on **Friday, the 21st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia Clerk of the Probate Court. 23-3t

Sydney F. Marshall, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna J. King, Deceased.
No. 12,926. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by A. Virginia Chessman, it is ordered this 7th day of June, A. D. 1905, that notice be and hereby is given to **Joseph Plankington, Jesse Plankington, Rebecca Plankington, and Gertrude Plankington**, of **Netawaka, Kansas, and Horace Chessman**, of Philadelphia, Pa., and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Robert E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aletia Ferguson**, late of the State of Pennsylvania, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1905. MARK FERGUSON, 5154 Brown st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,899. Administration. 23-3t

W. C. Prentiss and C. S. Muir, Solicitors
In the Supreme Court of the District of Columbia.
William H. Saunders et al. v. William Holmead et al.,
Equity, No. 23,552. Docket 58.

Upon consideration of the sixth report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating that they have received from Thomas E. Jarrell an offer of twenty-five cents ($0.25) per square foot, all cash, for the west twenty (20) feet front, by the depth thereof, of lot numbered thirty-two (32) in block thirty-one (31) of the Washington Loan and Trust Company's subdivision in Petworth addition to the city of Washington, District of Columbia, it is by the court, this 7th day of June, 1905, adjudged, ordered, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to the contrary be shown on or before the **30th day of June, 1905.** Provided a copy of this order shall be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-3t

Legal Notices

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth Behrens Kenny, Deceased.
No. 12,832. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by John W. Pilling, it is ordered this 2d day of June, A. D. 1905, that notice be and hereby is given to **Hannah Williams and the unknown next of kin of Elizabeth Behrens Kenny**, and to all others concerned, to appear in said court on **Tuesday, the 18th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Francis M. Moore**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. DAVID MOORE, 717 14th st. N. W.; WM. G. JOHNSON, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,924. Administration. 23-3t

Irwin B. Linton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Sarah Guffin, Deceased.
No. 12,938. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Susan A. Guffin and Harriet C. Guffin, executrixes, it is ordered this 8th day of June, A. D. 1905, that notice be and hereby is given to **Richard Guffin**, of Columbus, Ohio, and the **unknown heirs of James Austin Guffin, deceased**, and to all others concerned, to appear in said court on **Monday, the 10th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

L. Cabell Williamson, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Wilson Gregory, Deceased.
Administration No. 12,948.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, by Francis G. Gregory, it is ordered, this 8th day of June, A. D. 1905, that notice be and hereby is given to **Anna Gregory Carl, Margaret Gregory Taylor, William H. Gregory, Mary Gordon, Phœbe Oliver, Edward F. Brooks. Mary Brooks, Lula Brooks, Katie Brooks, Webster Stauffer, Mary Myrtle Ranck, Walter Stauffer, Drew Stauffer, Mabel Brooks**, and all others concerned, to appear in said court on the **19th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: James Tanner, Register of Wills. 23-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 26

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JUNE 30, 1905

CONTENTS.

Editorial 401
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Frank. W. Palmer, appellant, v. The District of Columbia 402
Amelia C. Travers, et al., appellants, v. Maria L. Reinhardt et al 406
Fannie E. Morgan, petitioner, v. Charles R. Morgan et al 409
Legal Notices 411

Retirement of Mr. Justice Martin F. Morris.

After a term of service of more than twelve years, and extending from the time of the creation of the court, Mr. Justice Martin F. Morris will retire from the Court of Appeals of this District on Friday, June 30, 1905. This action on his part, while expected for some time, causes general regret, not only to his associates on the bench, but the members of the bar and the community in general. Justice Morris has taken high rank as a judge. Coming to the bench after a long and most successful career at the bar, the qualities that made him eminent as a lawyer have distinguished him as a judge. The record of his judicial life is written in the reports of the court of which he has been an honored member. Justice Morris has also achieved wide distinction as an instructor in the law. He was one of the founders of the Georgetown University Law School, and in the long years of his service with that institution did much to give it the high rank it enjoys among the law schools of the country.

Justice Morris enjoys not only the highest respect of the members of the bar, but in a very large measure their cordial affection as well. It is the earnest wish of all that, while his active connection with the administration of justice in this District will end with his retirement, his life may be spared for many years to enjoy the rest to which his faithful labors in behalf of the best interests of the District entitle him. His retirement leaves but one of the original members of the court sitting—Mr. Chief Justice Shepard—and it is hoped it will be very many years before there will be occasion to name his successor.

Mr. Justice Louis E. McComas.

To fill the vacancy in the Court of Appeals of this District occasioned by the retirement of Mr. Justice Morris, the President has designated Hon. Louis E. McComas, of Maryland. The appointment will meet with general approbation. Justice McComas is not a stranger to our District bench, having served very acceptably for seven years as a justice of the Supreme Court of this District, and from which court he retired to accept an election as United States Senator from Maryland. It has been generally understood for some months that upon the contemplated retirement of Mr. Justice Morris he would be succeeded by Justice McComas. He is a lawyer of fine ability, and the success achieved by him during his previous occupancy of the bench is a guaranty that in the higher position to which he has been elevated he will render efficient service. It is expected that Justice McComas will take the oath of office on Saturday, July 1, 1905, though his active duties with the court will not begin until after the usual summer recess. He has many warm friends among the members of the District bar, who will welcome his return to the bench.

Resignation of Mr. Beach as United States Attorney

Mr. Morgan H. Beach, for several years United States Attorney for the District of Columbia, has tendered his resignation, and it has been accepted by the President, to take effect August 31, 1905. Mr. Beach was appointed to the position in November, 1902, to succeed Hon. Ashley M. Gould, who had been elevated to the bench; and his able discharge of its important functions has been the subject of very general recognition, and is especially referred to in the letter accepting his resignation. The work of the office during the period of his incumbency has been especially heavy, and included the preparation and trial of the cases in which officials of the Postoffice Department and others were charged with conspiracy. He has proven himself in many respects an admirable prosecuting officer. While seeking with relentless vigor to bring to justice those guilty of crime, he has been at all times fair in his methods and unfailing in courtesy to counsel appearing for the accused. Mr. Beach retires from the position with the cordial respect and esteem of both bench and bar. He will resume private practice, in which he was very successful before becoming a law officer of the Government.

The announcement of the successor to Mr. Beach in the office of United States Attorney has not yet been made.

Digitized by Google

Court of Appeals of the District of Columbia.

FRANK W. PALMER, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

SMOKE LAW; LIABILITY OF PUBLIC OFFICER FOR VIOLATION.

The Public Printer, as the custodian for the time being of the Government Printing Office, is liable for a violation of the act of Congress of February 2, 1899, prohibiting the emission of dense black or gray smoke from smokestacks or chimneys in the District of Columbia, other than chimneys of private residences; Mr. Chief Justice Shepard dissenting.

No. 1534. Decided June 13, 1905.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. Morgan H. Beach and *Mr. A. R. Mullowney* for the plaintiff in error.

Mr. A. B. Duvall, Mr. E. H. Thomas, and *Mr. F. H. Stevens* for the defendant in error.

Justice MORRIS delivered the opinion of the Court:

The appellant was arraigned in the Police Court of the District, and there was judgment rendered against him there for the violation of what is known as the "smoke law" of the District, that is, the act of Congress of February 2, 1899 (30 Stat. 812), entitled "An act for the prevention of smoke in the District of Columbia, and for other purposes." The act has been repeatedly before this court for construction, and its validity has been uniformly upheld. This, however, is the first occasion in which a public official, charged with the custody and control of one of the great public buildings of the city, has been held for a violation of the act. The appellant is the Public Printer, and the question now to be determined is whether, as the custodian for the time being of the Government Printing Office, he is amenable to the courts for a violation of the law in permitting the issue of dense black or gray smoke from the chimneys of that office. Under the numerous adjudications cited on his behalf, there is undoubtedly great plausibility in the appellant's contention that the executive offices of the Government in this city are not subject to the municipal regulations which all other citizens are required to obey. But we can not give our assent to the proposition that there is any class of officials above the law, or that there is one law for the official and another for the private citizen with reference to the same duty equally incumbent upon all, and which requires the equal obedience of all, if the statute which commands it is to be at all effectual for the purpose for which it was enacted. We can not think that it was the intention of Congress to suppress the nuisance of smoke emanating from a private hotel, and at the same time to authorize it tenfold, perhaps a hundredfold, greater in volume in the great public building across the street. Such discrimination, if it be assumed to exist, would be manifestly unjust, and by its palpable injustice would tend to bring the statute into odium and contempt, and would contribute more than aught else to prevent its effective observance.

If there is any one principle of our American institutions which is dear above all others to the hearts of our people, and of which the disregard is above all other things repugnant to our sense of justice, it is that of equality before the law. And this principle of equality is more applicable than anywhere else to the matter of municipal regulations. Municipal regulations intended for the safety of life and limb, and for insuring the public health, if they would be effectual, can not be permitted to be violated with impunity by any one, no matter what may be his station or his official position, and even though the offender should seek to shield himself behind the protection of international privilege. The individual citizen, desirous to obey the law and to conform to all its reasonable requirements, will feel himself sorely tempted in a contrary direction, and will not be solicitous to suppress the nuisance of smoke on his own premises or to remove the dangerous accumulation of snow and ice from the sidewalks in front of his residence if on the opposite side of the street from him the agents of the municipality or the agents of Government are under no obligation on their part to contribute anything to the public safety in that regard.

The act of Congress, for the violation of which the appellant has been charged, is an exercise of the police power of the State, and is intended to suppress a public nuisance injurious to human comfort and human life. The nuisance is equally deleterious and equally a nuisance whether committed by a private person in the management of a factory, store, hotel, or apartment house, or by an officer of the Government in the management of a large building, such as the Government Printing Office, temporarily intrusted to his care; and neither in the letter nor in the spirit of the law is there any apparent purpose to be found to discriminate against the private citizen and in favor of the public official. The terms of the statute are general and comprehensive. In the broadest and most emphatic language it declares the emission of dense black or gray smoke from any smokestack or chimney in the District, other than the chimneys of exclusively private residences, to be a public nuisance, and punishable as such. It did not content itself with forbidding and punishing the act, but it characterized the act as a public nuisance, in order that there should be no doubt about the scope and purpose of the enactment, and in order to eliminate the nuisance of smoke from the District of Columbia. For apparently good reasons, which are obvious to every one, the movable engines used for the propulsion of railroad trains and steamboats were excluded from the operation of the act. And for still more obvious reasons, of which this court may take judicial cognizance, namely, because in them hard or anthracite coal was almost universally used, which emits little or no smoke—the chimneys of private residences were specially excepted. But with these exceptions the prohibition is general, and the buildings used for the business of the Government are as much within the spirit and the letter and the purpose of the enactment as are department stores, office buildings, and hotels. Indeed, were there discrimination in this regard, a grave question of constitutional right might arise, based upon

Digitized by Google

the ground of palpable inequality, which such legislation would then suggest.

The same general purpose is evidenced in the sweeping enumeration of the persons liable to the penalty of the act, which comprise "the owner, agent, lessee, or occupant of any building of any description." Here, of course, if the scope and purpose of the enactment were such as to exclude the agents of the Government from its operation, we would not hesitate to hold, in accordance with the adjudications and with well-established principles of law, that these were not intended to be embraced within the statute, notwithstanding its very general and comprehensive language. But when we find the purpose to be general and to be best subserved by the inclusion of the agents of the Government, and when the language of the statute is amply sufficient in its generality to include such agents, we fail to see why they should not be regarded as embraced within its terms.

This conclusion is further strengthened by the fifth section of the act, which prescribes "that no discrimination shall be made against any method or device which may be used for the prevention of smoke and which accomplishes the purpose of this act." This would seem to be rather a direction by Congress to the agents of Government than an intimation to private citizens that they are entitled to use any proper device for the prevention of smoke. As an acknowledgment of private right in individual citizens, it would be meaningless; as a direction to officers of Government, it was eminently right and proper to insert it in the act; and the fact of the insertion of such a provision tends to show that the Congress intended that the officers of the Government in charge of public buildings should be included within the purview of the act.

On behalf of the appellant reliance is placed upon the well-established rule of law that where the State is not named in an enactment it is not bound by its provisions. Thus, the State ordinarily is not bound by the Statute of Limitations to which individual citizens are held, and there are numerous other illustrations to be found in the books; but this rule, it seems to us, is not here applicable. The appellant is not the State, nor does he represent the State, in this case. On the contrary, the State, or its representative, the municipality, is the party in interest against him. The State is interested, even as against its own officials, in having its laws enforced, especially those laws which are made for the preservation of the public health. It is not left to the public officials to determine for themselves whether they will obey the laws or not. It is not left to them to create a public nuisance at their pleasure and then shield themselves behind the pretense that they are the State and can not be held for that which the legislature expressly prohibited from being done. In France, in the days of Louis XIV, when he said that he was the state, this plea might hold. It might have availed a defendant even in the days of personal government in England, when the infamous maxim was in force that the king could do no wrong and his officers were shielded by his privilege. But we can not see how, in our country, and in this age and generation, a public official, charged with the commission of a public nuisance, which the legislative power of the State has endeavored most rigidly to prohibit, can protect himself by the claim that in the performance of the act he represents the State.

We have held in the case of Roth v. District of Columbia, 16 D. C. App. 323: 28 Wash. Law Rep. 432, that the municipality, even in the course of its performance of its governmental functions, is not entitled to perpetrate a nuisance. And the same rule will apply still more strongly to the executive officers of the Government, whose duty it is to execute and obey the laws, not to violate them. All laws are presumed to be consistent with each other until the contrary is shown; and, therefore, it is no excuse to a public official to secure him immunity for the violation of one law that he is obeying another. He must obey both. He must take all laws as qualifying each other, and, if he is the Public Printer, he must do the public printing under such rules and regulations as Congress has prescribed; and especially he must not do it under such conditions as Congress has prohibited.

Apart from the general principles which we have considered, and which we hold do not excuse him, the plea of the appellant is that he made estimates for the use of soft coal in the building under his charge; that he submitted those estimates to the proper committees of Congress, and that Congress approved them, and made its appropriation of money for the conduct of his office in accordance with them. But we fail to see how, in law or in reason, this affords any justification for a violation of the law against public nuisances. If this were the case of an agent for a private building, submitting to an absent or intangible owner, an estimate for the soft coal to be used in such building, and having the approval of such owner for his estimate, could it reasonably be contended for one moment that such estimate and approval would relieve the agent from liability for the creation of a public nuisance? Repeatedly in this court have we heard in this connection the pleas of parties that they have taken all the precautions in their power, and yet have been unable to prevent the prohibited emission of smoke from their chimneys; but, in the face of the express prohibitions of the act, and in the face of the fact taught by practical science that the nuisance is preventable, even with the use of soft coal, by the use of proper appliances and proper management, we have never held such pleas to be valid.

Congress has never prohibited the use of soft coal in this District. Such prohibition may be the inevitable result, if obedience is not otherwise rendered to the statute. But thus far it has evidently been the view of Congress that the use of soft coal is not inconsistent with the prevention of the public nuisance created by the emission of dense smoke from chimneys. This being the case, it is not apparent why the appellant should regard his use of soft coal under the authority of Congress as a justification of a public nuisance, which Congress has been careful to prohibit. In other words, it is not the use of soft coal that causes the public nuisance, but the use of it in an improper way

Digitized by Google

or without the proper appliances, and the appellant has not said that he has used this coal in the proper way, or that he is without the proper appliances for the prevention of smoke from it. His true defense is, not that he has used soft coal under the authority of Congress, but that Congress has not furnished to him the proper appliances wherewith to divest such use of its resultant nuisance of smoke. And this defense he has not made. But let us assume that he has made it, and that this is what he means. Is it a good defense? We think not.

The smoke law has now been in force for upwards of six years. So far as the record before us discloses, it does not appear that during that whole period the appellant has at any time made any effort to conform to the requirements of the statute. It will not do for him to say that Congress has not provided him with the proper appliances when he has made no effort to procure such appliances. It can not be assumed that, in the multitude and magnitude of its public duties, Congress can take the initiative in the determination of the details needed for the conduct of any public office or department of Government.

The appellant was appointed to his office with the duty imposed upon him to conduct that office according to law—according to all the laws affecting it—the smoke law, as well as others; and he is not at liberty to conduct the business of that office in violation of law. The duty was incumbent upon him, as upon all executive officers, to report to Congress the requirements necessary for its management in accordance with the law. It does not appear that he has done so. If it appeared that he had made application for the proper appliances and that the application had been refused or ignored, perhaps a different question might be presented here. But that question is not presented now, and we can not assume that Congress will deliberately refuse to executive officers of the Government the necessary appliances for giving effect to its own act and its own specific and reiterated requirement.

We are of opinion that the judgment of the Police Court in this matter was right and just, and that it should be affirmed.

But, inasmuch as the operations of the Government Printing Office might be seriously interfered with by rigid enforcement of the act at the present time when Congress is not in session and application can not immediately be made to it by the appellant to remedy the result of past negligence, the municipal authorities, we think, would do well to exercise discretion in the matter of further prosecutions at this time.

Affirmed.

Mr. Chief Justice SHEPARD dissenting:

Regretting that I can not concur in the judgment of my brethren, I think it proper to state the reasons for my dissent.

To the information presented against him the defendant entered a special plea alleging, in substance, that the said building was solely owned, used, and occupied by the United States; that in the discharge of his duties as Public Printer in the execution of the work carried on in said building, it was his duty to report, annually, to the "Joint Committee on Printing" of the two houses of Congress, submitting estimates of the materials and so forth, including fuel, for the use and consumption of said printing office, together with all contracts and payments therefor; that Congress has regularly appropriated the money for the purchase of bituminous coal to be used as fuel in the furnaces of said building, all of which purchases have been duly reported as aforesaid; that in the discharge of his duties he has used due care and prudence in the use of said bituminous coal in carrying on the work required by the United States in said building; and that the emission of smoke was occasioned by the use of said fuel notwithstanding his exercise of due care and prudence in the performance of his said duties.

The Attorney-General filed a motion on behalf of the United States to set aside and dismiss the information for want of jurisdiction of the court, on the ground, as he informed the court, that the building is the property of the United States, possessed, held, and occupied by them for public purposes, and that the defendant is a public officer of the United States and not the owner, agent, lessee, or occupant of the same.

The court denied this motion and sustained a demurrer to the said plea. The defendant electing to stand upon his plea, the court adjudged him guilty and sentenced him to pay a fine of $50, and in case of default in payment thereof to be imprisoned for sixty days.

There is no occasion to consider whether the Public Printer would be liable for the commission of a nuisance through his own wrongful act or neglect of duty, because the allegation of the exercise of due care and prudence in the use of the appliances furnished by the United States has been admitted by the demurrer to the plea. Nor is the effect of this allegation avoided by the further allegation that it was the duty of the Public Printer, among others devolved upon him by Congress, to make estimates of the supplies and fuel needed in the operation of the printing office, for the consideration of the "Joint Committee on Public Printing." For neglect of duty or misconduct, if any, in that respect he can be held responsible by the United States, but not by the District of Columbia in this proceeding.

Whatever effect his recommendations or want of recommendation may have had upon said committee, the fact remains that Congress provided by law for the operation of the engines of the Government Printing Office through the use of bituminous coal, without providing, at the same time, for the necessary appliances to consume the smoke therefrom.

The single question for determination, then, is, whether the act of Congress approved February 2, 1899, applies to the buildings in the District of Columbia belonging to and operated by the United States?

The act reads as follows:

"Section 1. That on and after six months from the passage of this act the emission of dense or thick black or gray smoke or cinders from any smokestack or chimney used in connection with any stationary engine, steam boiler, or furnace of any description within the District of Columbia shall be deemed, and is hereby de-

Digitized by Google

clared to be, a public nuisance: Provided, that nothing in this act shall be construed as applied to chimneys of buildings used exclusively for private residences.

"Section 2. That the owner, agent, lessee, or occupant of any building of any description from the smokestack or chimney of which there shall issue or be emitted thick or dense black or gray smoke or cinders within the District of Columbia on or after the day above named shall be deemed and held guilty of creating a public nuisance, and of violating the provisions of this act.

"Section 3. That any person violating the provisions of this act shall, upon conviction thereof before the Police Court of the District of Columbia, be punished by a fine of not less than ten dollars nor more than one hundred dollars for each and every offense; and each and every day wherein the provisions of this act shall be violated shall constitute a separate offense."

The general object of the exercise of legislative power is the enactment of laws for the regulation of the acts and rights of citizens, and not of the sovereign. And the universal rule of construction is that the sovereign state is not bound or its rights affected by a statute of apparent general application unless expressly named therein, or unless the words used are so clear and unmistakable as to leave no doubt that such was the legislative intention. This rule has been uniformly applied in the construction of general statutes of limitations and bankruptcy, and others relating to revenue licenses and impositions, to interest upon debts and demands, to judgment and mechanics' liens, to practice and the like. U. S. v. Knight, 14 Pet. 301, 315; U. S. v. Insley, 130 U. S. 263, 266; U. S. v. Herron, 20 Wall. 251, 255; Lewis v. U. S., 92 U. S. 618, 622; Stanley v. Schwalby, 147 U. S. 508, 515; Page v. D. C., 20 App. D. C. 469, 474-5: 30 Wash. Law Rep. 758; State v. Milburn, 9 Gill. 105, 117; Carr v. State, 127 Ind. 204, 220; Seton v. Hoyt, 34 Oregon, 266, 273; Josselyn v. Stone, 28 Miss. 752, 763; Mayrhofer v. Board of Education, 89 Cal. 110; Fuller v. Roosevelt, 4 Cowen, 143; State v. Garland, 7 Iredell L. 48; Cole v. White, 32 Ark. 45, 51; Stoughton v. State, 5 Wis. 291, 297; Butler v. Merritt, 113 Ga. 238; Mayor v. King, 91 Ga. 522, 524; People v. Gilbert, 18 Johns. 227.

Authorities need not be multiplied in support of a general principle that has met with no judicial denial so far as my research has extended. In the main those have been selected which would seem to bear most directly upon the application of the general principle to the conditions presented by the case at bar; and some of these will be briefly reviewed.

In Page v. D. C., supra, it was held that an act providing in broad terms that no person shall sell liquor in the District of Columbia without a license, etc., did not apply to persons conducting restaurants in the Capitol under arrangements made with committees of the House and Senate respectively.

In State v. Milburn, supra, it was held that a general statute declaring that no bond shall be received in evidence that had not been stamped, as provided by a revenue law relating to bonds of every nature whatsoever, did not apply to an unstamped bond sued on by the State of Maryland.

In Josselyn v. Stone, supra, a general statute required the registration of all judgments in order to give liens, and another was subsequently passed providing that all such liens shall be enforced within a certain period or else lost. Held, that the latter statute, which did not name the State, though sweeping in its terms, did not apply to the lien of a judgment in favor of the State.

In Mayrhofer v. Board of Education, supra, it was held that a general statute providing for a mechanic's lien upon "any property," and "any building," did not extend to a school building in a district acting by authority of the State.

In Fuller v. Roosevelt, supra, it was held that a general statute abolishing imprisonment for debt did not bind the State because it was not named.

In Seton v. Hoyt, supra, a general statute providing for the running of interest on all debts and demands was held not apply to the debt of a county, because it was a subdivision of the State, and the latter was not named in the act.

In Cole v. White, supra, a general fee bill authorizing certain costs for the service of all writs by officers was held inapplicable to writs served in proceedings on behalf of the State. To the same effect, People v. Gilbert, supra.

In State v. Garland, supra, it was declared that the State was not bound by a general statute regulating jurisdiction in cases of appeal.

In Butler v. Merritt, supra, the following facts appear: The State, by authority of law, maintained a dispensary in a town for the sale of liquor. Subsequently, the town, by a popular vote taken in accordance with the provisions of a general local option law, put the latter in force. This was a sweeping act prohibiting the sale of liquor by all persons. The court held that sales by the State were not within the prohibition, and that the word "persons" did not include the agents of the State. In Stoughton v. State, supra, the defendant was indicted for a nuisance directly resulting from a dam maintained under grant of power by the State. The conviction was reversed on the ground that the State could not punish as a crime an act which it had expressly authorized. No question of injury done to private individuals by reason of the nuisance was involved. To the same effect, People v. Gas Works, 64 Barb. 69.

Tested by the principle stated, in the light of its application in the analogous cases before cited, I am of the opinion that the act of Congress does not apply to the public buildings of the United States in the District of Columbia. Had the regulation been enacted by the municipal authorities under broad general police powers conferred upon them by Congress from time to time, it would not be contended that they, without express authorization, could bring the buildings of the United States under their jurisdiction. From the beginning, a distinction has been carefully made, in respect of management, control, and police, between the public property occupied and used by the United States for governmental purposes, as well as much that is not so used; and that of ordinary

Digitized by Google

public use which falls naturally within the scope of municipal control and supervision.

As regards the regulation of the uses of public property of the latter kind, as well as that of private owners, Congress, which is invested with plenary powers of legislation within the limits of the District of Columbia, has rarely, if ever, conferred upon the municipal authorities other than the minor powers of regulation that are common to municipal corporations in this country generally. Congress reserves to itself the granting of franchises in the public streets, their extension and improvement, as well as the regulation of some of their ordinary uses by the public. By direct legislation it has established some market places and provided for their general regulation; created hack and cab stands in certain public places, and has undertaken to provide for the removal of snow and ice from the sidewalks. See Coughlin v. D. C., 33 W. L. R. 376. Other instances might be cited. The act under consideration is a municipal regulation of the same nature. Clearly its primary object was to direct the uses of property ordinarily subject to municipal police regulation. The United States are not named in the act, and I do not find in the use of general words, common in all such local legislation, an unmistakable or certain intent to include their public buildings within its operation. The words "agent" and "occupant" in addition to "owner" and "lessee" are aptly used to meet the case of corporate ownership, and of private ownership where the owner retains no constant personal direction and management. The word "persons" used in the third section necessarily refers, and is limited in its meaning, to the "owner, agent, lessee, or occupant" named in the second section.

Neither "agent" nor "occupant" aptly describes the relation of the Public Printer to the owners of the building in this case. The occupation as well as the ownership of the building is unquestionably that of the United States; and the Public Printer, who superintends the business which they carry on, with the means and appliances furnished by the legislative department, is not their agent within the ordinary meaning of that word. He holds a public office created for the purposes of the Government, and to that end certain powers have been delegated to him. And a public officer is quite different from an ordinary agent. U. S. v. Maurice Z. Brock, 96, 102; Atty.-Gen. v. Drohan, 169 Mass. 534, 535; Atty.-Gen. v. Jochim, 99 Mich. 358, 367.

In the absence of some express declaration to the contrary, I regard it as most unreasonable to presume that Congress contemplated his prosecution and punishment, equally with the agents of private owners, when, in the exercise of ordinary care, he was engaged in the performance of public duties imposed upon him by law with the only means and appliances provided for the purpose. It requires more than inference to convict the Congress of the gross injustice and oppression of enacting a law embracing in its term the administration of a dapartment of the Government, and then subjecting the officer charged with that administration to punishment for the careful discharge of duties imposed upon him by express provisions of the law.

The apparent injustice of making a distinction between public and private ownership of buildings in respect of the emission of noisome smoke and cinders is a matter with which the courts have nothing to do. This injustice, however, consists not so much in the exemption of the buildings of the United States from the operation of a municipal regulation, as in the failure to provide the necessary fuel or appliances through which the emission of objectionable smoke might reasonably be prevented. In my opinion the judgment of the Police Court ought to be reversed with direction to sustain the plea and motion.

AMELIA C. TRAVERS ET AL., APPELLANTS,

v.

MARIA L. REINHARDT ET AL.

WILLS; CONSTRUCTION OF DEVISE; MARRIAGE, PROOF OF; EVIDENCE.

1. Testator devised the greater part of his real estate to his sons in two classes of devises—the first in fee simple; and as to the second, he directed that if any of the sons should die without leaving a wife or children living at his death, the estate devised to him should go in fee to the surviving sons and the child or children of such as might be dead, such child or children representing the share of the father; but if either son should, at his death, leave a wife, with or without child or children, she should be entitled to dower. Two of the sons died, each leaving a widow but childless—the one intestate, his heirs at law being two brothers and three sisters; the other leaving a will devising his real estate in this District to his brothers and sisters, and his estate elsewhere to his widow. Subsequently the sole surviving son died, leaving as his heirs several children who claimed the entire interest of their two uncles under the limitations in the second class of devises above referred to, though their father made no such claim in his lifetime. *Held*, denying this contention, that upon the death of the first son, leaving his wife surviving, his interest under the second class of devises passed to his two brothers and sisters as his heirs at law; and, upon the death of the other, leaving his wife living, his interest passed to the devisees under his will.
2. Whether a lawful marriage subsisted between parties domiciled in New Jersey at the time of the death of one of them depends upon the law of that State, in which a valid marriage may be entered into by contract per verba de presenti, no particular ceremony being necessary.
3. The evidence in the present case reviewed, and held sufficient to show a valid marriage under the laws of New Jersey.
4. The admission by a witness on cross-examination that she had testified falsely in one particular held not to require the rejection of her entire testimony.

No. 1525. Decided May 23, 1905.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 21,484, in suit for partition. Affirmed.

Mr. E. A. Newman, *Mr. A. A. Birney*, and *Mr. Charles H. Stanley* for the appellants.

Mr. W. A. Gordon, *Mr. Geo. E. Hamilton*, and *Mr. M. J. Colbert* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This suit was begun by a bill filed by Amelia C. Travers and her husband, Charles E. Travers, whose assignee she is, for the partition of certain real estate in the District of Columbia formerly belonging to Nicholas Travers, who died testate in January, 1849. The defendants

Digitized by Google

are heirs at law or claimants under certain devisees of the said Nicholas Travers. The property has been sold by order of the court, all parties consenting thereto, and the distribution of the proceeds of the sale awaits the final determination of the interests of the several claimants thereof.

Nicholas Travers devised a large estate in unequal proportions to his four sons and three daughters—Elias, Nicholas, Joseph, James, Mary, Elizabeth, and Sidney Virginia. The greater portion was devised among the sons named in two classes of devises. In those of the first class he used the words "in fee simple." In the second class these words are omitted. The distinction made between the two is expressly recognized and referred to in the following general provision: "With regard to the several estates hereinbefore devised to my several sons, it is hereby declared to be my will, and I do order and direct, as a general provision, that if any of my sons should die without leaving a wife, or a child or children living at his death, then his estate herein devised to him, saving and excepting those portions thereof expressly granted and so named to be "in fee simple," and which they can sell and dispose of as they think fit, shall go, and be invested in fee, to my surviving sons and the child or children of such as may be dead, such child or children representing the share of the father—but if either of my sons shall, at his death, leave a wife either with or without a child or children, such wife shall be entitled to her dower rights and privileges." The property involved in this controversy is the real estate (and now the proceeds thereof), coming within the limitations of the foregoing general provision, that was devised to Joseph Travers and James Travers. Joseph Travers died intestate in September, 1882, leaving a widow since deceased, but no child or children or descendants of such. His heirs at law were his brothers Elias and James and his three sisters before mentioned. James Travers died in October, 1883, leaving a will devising his real estate in the District of Columbia to his surviving brothers and sisters, and all property elsewhere to his wife. Whether he was ever lawfully married to the person named in the will as his wife is one of the questions to be determined.

Elias Travers died intestate on April 29, 1887, and his heirs at law are his children, Charles E. Travers and the defendants John H. Travers, Joseph Travers, James W. Travers, Sidney Travers, and Kate M. M. Owens. These last claim the entire interest in the real estate devised to Joseph and James Travers that comes within the limitations of the provision of the will of Nicholas Travers before quoted. The auditor, to whom the settlement of the account of sales and the settlement of the interests of the parties had been referred, found against this contention. He found also that James Travers had been married to the wife named in his will who survived him.

His report was confirmed and a decree entered for the distribution of the proceeds of the sale in accordance therewith, from which this appeal has been prosecuted by the heirs of Elias Travers.

Upon the admitted fact that Joseph Travers, who died intestate, had been lawfully married to a wife who survived him, and assuming, for the time being, that James Travers, who devised all of his estate in the District to his surviving brothers and sisters, left a surviving wife also, the question to be determined is, whether their interests in the real estate embraced within the terms of the general provision of the will of Nicholas Travers passed to the heirs at law of the one, and the devisees of the other, or became vested in the surviving brother Elias?

The answer involves the ascertainment of the intention of the testator as expressed in the language of the general provision which, having been set out above, need not be repeated.

The claim that the entire estate became vested in Elias Travers, upon the death of his brothers Joseph and James, respectively, without leaving a child or children, rests upon the contention that the dominant intention of the testator was to retain the succession, as regards the property embraced in the limitations of the general provision, in the direct line of his male heirs; and that this dominant intention compels a construction of the general provision that would substitute the word "and" for the disjunctive "or" where it first occurs in the line "without leaving a wife, or a child or children." We agree with the opinion expressed by the auditor and the learned trial justice that there is no expression of such a controlling intention as to require this substitution. The words used are plain and unambiguous. This being so they must be given their ordinary and usual meaning, and can not be controlled by conjecture. The same words are repeated in another part of the general provision itself; and at the end of the first item of disposition in the will it is provided that certain of the devises therein "shall be subject to the general provision hereinafter made in case of any of my sons dying without having a wife or a child or children." This repetition of the phrase tends to show deliberation and care in the selection of words expressive of the testator's intention.

That Elias Travers himself, and after his death his heirs, took an entirely different view of the testator's intention from that now maintained on their behalf, is conclusively shown by the testimony introduced by the appellees in support of an allegation in their answers setting up an agreement by way of family settlement. It was alleged that in December, 1882 (after the death of Joseph), Elias and James Travers entered into a written agreement with their three sisters, by which it was provided that the interest of Joseph in the property under the operation of the general provision aforesaid should be treated as the joint and equal property of all of the said parties, which said agreement was carried into effect by entrusting the property to a joint agent who distributed the revenues thereof in accordance with its terms. That after the death of James Travers the same agreement was extended to his interest. And that after the death of Elias Travers the revenues of the undivided property were collected and distributed by the same agent among the heirs of all in their proper proportion until a short time before the filing of the amended bill in this suit.

Digitized by Google

No such written agreement could be found, nor could direct proof of it be made, because all of the parties who would have had any actual knowledge of the same had departed this life before the controversy began. In the view that we have taken of the proper disposition of the case it is not necessary to determine whether the circumstantial evidence is sufficient to show that such an agreement was in fact executed as alleged. Whether so or not, Elias Travers certainly acquiesced in the claim of his sisters. The evidence shows beyond question that after Joseph's death the rents of his portion were distributed equally between Elias, James, and the three sisters. On January 1, 1886, Elias joined his sisters in the lease of a parcel of the property now in question to one Smith, in which the lessors are recited as "the only heirs at law of the late James Travers, deceased," and which provided that the rent should be paid to the lessors and surrendered to them and their heirs. After Elias' death the same distribution of the rents of the parts of the property devised to Joseph and James was continued.

The only materal question that remains for determination is whether James H. Travers was survived, as alleged, by a lawful wife. The only evidence of the marriage consists of the testimony of the alleged wife, since married to another person. She testified to the following facts substantially: She was an orphan 17 years old when she met James H. Travers, and her domicile was in West Virginia. James H. Travers lived in the District of Columbia. She went with him to Alexandria, Virginia, in August, 1865, where what she supposed to be a regular marriage ceremony was celebrated between them. There was no marriage license in fact, and the person who performed the pretended marriage ceremony was not a minister, though she believed him to be one at the time. They cohabited thereafter until James Travers' death at Point Pleasant, New Jersey, on November 1, 1883. They first took a trip to New Jersey; were in New York on several visits, and spent about three weeks in the city of Washington, boarding with a tenant of Travers. She believed that she had been lawfully married until she learned the truth about six years afterwards. He always said "that it was all right, and we were just as much married as if we had been married before a priest or a minister." In 1867 he bought a farm in Talbot County, Maryland, where they lived together nearly sixteen years. During the whole time he called her and introduced her as his wife, and she was so recognized in the community generally. They removed to Point Pleasant, New Jersey, in 1883, and she was there recognized and reputed to be his wife until his death. She had two children by James Travers, both of whom were stillborn. By way of corroboration a mortgage, executed on September 27, 1867, to secure the purchase money of the Talbot County farm, by James Travers and his wife, Sophia V. Travers, was read in evidence. She was named therein as his wife, and her acknowledgment was so taken and certified to by a justice of the peace. The instrument was duly recorded. An unattested will purporting to have been executed by James Travers in Talbot County, Maryland, on February 8, 1881, in which the bulk of his estate is devised and bequeathed to "my wife, Sophy Virginia Travers," was also produced. Another will was read in evidence, that was made at Point Pleasant, New Jersey, October 5, 1883. This was duly executed and attested by three witnesses. It was probated in the proper court in New Jersey, and letters testamentary were issued to said Sophia V. Travers. Later it was registered in the District of Columbia. By this will the testator devised all of his estate in the District of Columbia to his brothers and sisters. The remainder of his property of every description he devised and bequeathed, as recited, "to my wife while she remains my widow," with full power of alienation, etc., with remainder over to a daughter of such as may remain undisposed of at her decease. It is further recited: "In the event of my wife's contracting another marriage then it is my will that she shall possess and enjoy as of her own right only one-third of the property remaining." . . . By the last clause his wife is appointed sole executrix.

It is contended that no weight whatever should be given to the oral testimony above summarized, because on cross-examination the witness admitted that she had testified falsely in one particular. It appears that on her first examination she became greatly excited and abruptly left the examiner's office. Later her cross examination was resumed in Philadelphia, where she had her residence. She then confessed to having made a false statement relating to a matter not hereinbefore stated. We can not agree with the contention that the conditions presented compel the application to this evidence of the maxim, falsus in uno falsus in omnibus. The witness had no interest whatever in the subject-matter of the litigation. The single false statement related to a matter not material in the determination of the case. Its recital is unnecessary, it being sufficient to say that it involved the reputation of another person, and that the temptation to shield that reputation was a strong one indeed. Having made the statement, she subsequently admitted its falsity under no apparent fear of contradiction or penalty. No withdrawal was made of any statement concerning her relations with James Travers, and no attempt was made to contradict any one of them, although the cross-examination shows that inquiry had been made in the community in which she lived so long in Maryland concerning his representations that she was his wife. Moreover, the documentary evidence before recited corroborates every statement made by her save that relating to the pretended marriage ceremony. That statement does not appear to be incredible, but whether it be true or false is, in our view of the case, of no practical importance.

The legal status of the said Sophia V., as the wife of James Travers at the time of his decease, does not depend upon the law of Virginia where the pretended marriage ceremony was performed. And it may be conceded that the pretended marriage was absolutely void in that State for the want of the statutory license. Offield v. Davis, 100 Va. 250. Nor does it depend upon the law of Maryland wherein so many years of the alleged married life of the parties were spent. Consequently it is unneces-

Digitized by Google

sary to determine whether, in that State, though a valid marriage will be presumed upon proof of cohabitation, general reputation, and acknowledgment of the existence of the relation, it will so be in a case where it is shown that cohabitation began without the requisite ceremony. See Barnum v. Barnum, 47 Md. 251, 296; Richardson v. Smith, 80 Md. 89, 93.

That an informal marriage by contract per verba de presenti constitutes a valid marriage by the common law, which then, at least, prevailed in the District of Columbia, there can be no doubt. Meister v. Moore, 96 U. S. 76, 78. But whether a lawful marriage has been shown in this case depends upon the law of New Jersey; where the parties had their domicile at the time of the death of James Travers. If lawful there it will be recognized here. It seems well settled in that State that a valid marriage may be en tered into by contract per verba de presenti; no particular ceremony is necessary. Nor is it of any consequence that the original relations of the parties may have been illicit, provided there be sufficient evidence that a contract of marriage was thereafter made. Atlantic City R. R. v. Goodin, 62 N. J. L. 394, 401.

That was an action for damages for an injury resulting in death, brought by the alleged widow of the deceased. There had been a ceremonious marriage between the parties many years before, but at that time Goodin had a lawful living wife from whom he had separated. After obtaining knowledge of that fact, plaintiff continued to cohabit with him. About 1892, the real wife died. Presumption of marriage, it was said, could not be indulged from the mere fact of cohabitation illicit in its commencement. The plaintiff testified, however, to a contract with Goodin, made verbally after the death of his first wife. There was no other evidence tending to show such a contract save a declaration made by Goodin sometime in 1892 or 1893, to a niece of plaintiff, and testified to by her alone, that, "Your aunt now is my lawful wife." Upon this evidence plaintiff was held to be his lawful wife.

The testimony in this case is far stronger. The alleged wife testified to statements made to her by James Travers, after her discovery of the fact of the unlawfulness of the marriage, tending in some degree to warrant an inference of contract. This was followed by his public recognition of her as his wife, testified to by her, and shown in the recitals of the mortgage and of the unprobated will written by himself. After taking up residence in New Jersey, he continued to recognize her publicly as his wife. Whatever doubt there might be of the sufficiency of this evidence alone is settled by the recitals of the will made in New Jersey. Therein he devised and bequeathed certain of his estate to her as his wife, without giving her name, the amount thereof dependent upon her remaining his widow. And by another recital, whether so intended or not, he met the very condition of a previous actual contract of marriage by the words, "in the event of my wife's contracting another marriage." She could not contract another marriage unless she had first contracted one with him.

We are of the opinion that the evidence is sufficient to show that James Travers had a lawful wife at the time of his decease. In accordance with the foregoing conclusions, the decree must be affirmed with costs; and it is so ordered.

Affirmed.

FANNIE E. MORGAN, PETITIONER,
v.
CHARLES R. MORGAN ET AL.

APPEALS; TRANSCRIPT OF RECORD; POWER OF COURT TO COMPEL HUSBAND TO PAY COSTS OF.

This court is without power to order a husband, the appellee in a divorce proceeding, to pay to the appellant a sum reasonably sufficient to enable her to prosecute the appeal, where the appeal has not been perfected by the filing of the transcript of record in this court.

No. 209. Original Docket. Decided April 11, 1905.

PETITION for an order requiring respondent to provide funds for prosecution of appeal from decree granting divorce, etc. Denied.

Mr. A. S. Worthington for the petitioner.

Mr. Andrew Wilson and *Mr. N. W. Barksdale* opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is a petition asking this court to pass an order directing the respondent to pay over to the petitioner a sufficient sum to enable her to prosecute an appeal from the decree of the Supreme Court of the District of Columbia, the same to cover the costs of a transcript of the record, and reasonable attorney's fees. A further order is prayed enjoining the respondent from taking possession of certain real estate under said decree, and from, in any wise, interfering with the occupation thereof by petitioner and her children.

The facts disclosed by the petition and exhibits are these: (1) The respondent, Charles R. Morgan, filed a bill in the Supreme Court of the District, praying a divorce from the petitioner, Fannie E. Morgan, on the ground of adultery. (2) Thereafter, on November 7, 1902, petitioner filed a bill against said Charles R. Morgan, seeking specific performance of an oral agreement by said Charles R. Morgan to convey to her the title to certain real estate in the District, upon which she and her said husband and their children then lived. (3) Her said bill was dismissed on February 15, 1905, and from that decree she has appealed, intending to perfect her said appeal. (4) Petitioner filed a cross bill in the suit of Charles R. Morgan for divorce. (5) March 6, 1905, the court ente.ed a final decree, dismissing petitioner's cross bill and granting a divorce to said Charles R. Morgan upon his bill. (6) Said decree adjudged the costs of suit against Charles R Morgan and one Frank Michinard, co-respondent, and further ordered said Charles R. Morgan to pay to petitioner, within thirty days, $400, as alimony accruing due under former orders of the court, and $200 as additional counsel fees for the prosecution of her case in said court. (7) It was also ordered that, until the further order of the court, the petitioner shall have the custody of the children, three in number, and that said Charles R. Morgan shall pay to her the sum of $30 per

Digitized by Google

month for the support of the said children. (8) Before the entry of the said final decree the petitioner, announcing her intention to appeal from so much thereof as denied the relief prayed in her cross bill, and granted the prayer of said Charles R. Morgan for divorce, prayed the court for an order compelling said Charles R. Morgan to pay a further sum to the petitioner for the services of her solicitors to be rendered in the prosecution of her said appeal. (9) As recited in the decree this application was denied. (10) The former order of the court restraining said Charles R. Morgan from entering the dwelling house where petitioner then resided and removing anything therefrom, or interfering with petitioner's possession, was dissolved. (11) From so much of the decree as dismissed her cross bill and sustained the bill of Charles R. Morgan, as well as from so much of the same as denied the allowance of solicitor's fees on appeal, the petitioner gave notice of appeal. (12) The appeal was allowed upon condition that an appeal bond for $50 be executed. (13) It does not appear from the allegations of the petition that this bond has been executed, but from the statement of counsel, it has been approved and filed in the court below. (14) The petition further alleges the innocence of the petitioner of the charge of adultery, her inability to raise the money necessary to perfect her appeal, and that she has been advised by counsel that her case is one that should be heard on appeal.

Whether this court, in the exercise of a sound discretion, has the power to order a husband, who is the appellee in a divorce proceeding, to pay to the appellant a sum of money reasonably sufficient to enable her to prosecute an appeal which has been perfected by filing a transcript as required by the rules regulating appeals in general, is a question that is not involved in the consideration of the prayer of petitioner.

Assuming, without deciding, that the power may be exercised in such a case, we are of the opinion that we have no jurisdiction to exercise it in the case presented by this petition. The filing of an appeal bond, if such be the fact, is but a preliminary step in the perfection of an appeal. Complete jurisdiction, for all the ordinary purposes of the appeal, is not acquired until the transcript shall have been filed. Having filed an appeal bond, the appellant is under no compulsion to obtain and file a transcript in this court, but may abandon the appeal. In case of his failure to file the transcript within the prescribed period, the appellee may obtain and file one at his own cost, if so advised, and obtain a hearing thereon; otherwise, he may, upon presenting the proper certificate showing the appellant's abandonment of the appeal, cause the same to be formally docketed and dismissed. Rule XIV.

Without such a transcript there is no proper foundation for the exercise of discretion upon a prayer for an order either affecting the merits of the appeal or the charges incidental to its effective prosecution. Even if the appellate court would have the power, after acquiring complete jurisdiction in the manner indicated, to make an order compelling the appellee to advance the money necessary to the prosecution of the appeal, the better practice would be to apply to the trial court for such an order, as was in fact done in this case. The power of the trial court to make such an order on behalf of the appellee from a decree awarding alimony, has been affirmed in a recent case. Sparks v. Sparks: 33 Wash. Law Rep. 344.

Moreover, in order to grant the prayer of the petitioner, the court, if vested with the power, would be compelled not only to act without the knowledge of the facts to be obtained from the transcript of the proceedings below, which is, in part at least, necessary to the exercise of a reasonable discretion, but also, in advance of the hearing, to reverse in part the decree from which the appeal is sought to be prosecuted.

The petition must be denied with costs, and it is so ordered.

Bailment—Negligence—Prima Facie.—A total failure of a bailee, to whom goods are intrusted for delivery, to deliver or account for goods, is prima facie evidence of negligence. Simonoff v. Fox, 91 N. Y. Supp. 757.

Frauds, Statute of—Conveyances—Ferry Landing.—A continuing right to use land for a landing place for a ferry is within Rev. St. 1895, art. 624, providing that no estate of inheritance shall be conveyed, except by an instrument in writing. Parsons v. Hunt (Tex.), 84 S. W. Rep. 644.

Patents—Infringement—Change of Form.—The fact that a defendant has appropriated the device of a patent and has been very successful in its sale is persuasive evidence against him on the defense of anticipation. A. R. Milner Seating Co. v. Yesbera, U. S. C. C. of App., Sixth Circuit, 133 Fed. Rep. 916.

Contracts—Validity.—A contract between a bank and a manufacturer, whereby the bank was to advance to him certain money, but the manufacturer was not bound to accept it unless he found it necessary, held unilateral. Swindell & Co. v. First Nat. Bank (Ga.), 49 S. E. Rep. 673.

Bailment—Piano—Action for Rent.—In an action for the rent of a piano, where there was no evidence as to its condition, nor as to value of its use, it was error to direct a verdict for plaintiff for a specified sum.—O'Donnell v. Wing & Son (Ga.), 49 S. E. Rep. 720.

Bankruptcy—Discharge—Individual Note of Partner.—A judgment on a note for a firm debt, though signed only by the partners individually, held within the discharge in bankruptcy of the partners from debts provable against the partnership estate. Young v. Stevenson, Ark., 84 S. W. Rep. 623.

Attorney and Client—Compensation—Reasonable Fee.—In the absence of an agreement as to the amount of an attorney's compensation, he is entitled to the reasonable value of his services. Dempsey v. Wells (Mo.), 84 S. W. Rep. 1015.

Digitized by Google

JUDGMENT FOR SALE.

I. Geraci vs. M. Leavy.

Judgment and costs, $54.50.

1t Apply 204 McGILL BLDG., CITY.

Legal Notices

FIRST INSERTION.

R. B. Behrends, Attorney

In the Supreme Court of the District of Columbia.
In Re Estate of J. K. Wilhelmina Kirchner, Deceased.
No. 8794.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 13th day of April, 1898, purporting to be the last will and testament of J. K. Wilhelmina Kirchner, deceased, has been returned as to Frederick W. Boucher, Edward Boucher, and Rosa Mitchell "not to be found," it is, this 27th day of June, 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **10th day of October, 1905**, and that this order and the substance of said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter, and twice a week for the same period in The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

ISSUES.

1. Was the said paper writing propounded as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, bearing date the 13th day of April, 1898, executed by her in due form of law? 2. Was the said J. K. Wilhelmina Kirchner, at the time of the execution of said paper writing, bearing date the 13th day of April, 1898, of sound mind, and capable of executing a valid deed or contract? 3. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured through the undue influence, importunities, suggestions, and persuasions of any person or persons? 4. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured by the fraud, deceit, or misrepresentations practiced upon her by any person or persons? 26-4t

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Arshak Abramian**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,021. Administration. 26-3t

W. A. McKenney, Solicitor

In the Supreme Court of the District of Columbia.
American Security and Trust Co., a Corporation, Complainant, v. Willard H. Myers et al., Defendants.
No. 25,432. Equity Docket No. —.

The object of this suit is to procure a sale of the interest of the defendant, Willard H. Myers, in and to the real and personal property held by the defendant, the National Safe Deposit Savings and Trust Company of the District of Columbia as administrator de bonis non, cum testamento annexo, and as trustee, under the will of Martha P. Myers, deceased, to satisfy the judgment of the complainant against said Willard H. Myers. On motion of the complainant, it is this 19th day of June, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Legal Notices.

M. J. Keane and M. J. Colbert, Solicitors

[Filed June 22, 1905—J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia,
Holding Equity Court.
Patrick J. Daly, Complainant, v. Douglass S. Mackall, the Unknown Heirs, Alienees, and Devisees of Samuel L. Sterrett. Equity No. 24,224. Doc. 54.

The object of this suit is to declare the title of the complainant to lots thirty-three (33) and thirty-four (34) in Patrick J. Daly's subdivision of part of square 539, as per plat recorded in liber 28, folio 13, of the records of the surveyor's office for the District of Columbia, located in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is by the court, this 22d day of June, 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Samuel L. Sterrett, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this case will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Absalom Baird**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM BAIRD, State Home, Annapolis, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,022. Administration. 26-3t

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta P. Meyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. JOHN H. F. MEYER, 904 23d st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,998. Administration. 26-3t

W. H. Marlow, Jr., Solicitor

[Filed June 21, 1905. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia.
Thomas Tracy et al. v. James E. Mulligan et al.
Equity No. 24,670. Doc. 55.

Walter H. Marlow, Jr, the trustee herein, having reported sale at public auction of part of original lot one (1) in square seven hundred and forty-nine (749) in the city of Washington, District of Columbia, more fully described by metes and bounds in these proceedings, and otherwise known as lot forty-two (42) in O'Donnoghue's subdivision of said square, as per plat in Book C. H. B., page 137, in the surveyor's office of the District of Columbia, improved by house No. 1004 Third street N. E., to Edward A. Scanlon, for the sum of ten hundred and forty-five dollars ($1045), all cash; it is therefore, this twenty-first (21st) day of June, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the **twenty-second (22d) day of July, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 26-3t

Digitized by Google

Legal Notices.

Wm. L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Heinrich Wilhelm Feador Dukehart, Deceased. No. 13,010. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John Waldman and H. A. Schenerman, it is ordered this 23d day of June, A. D. 1905, that notice be and hereby is given to the unknown heirs of the decedent, and to all others concerned, to appear in said court on **Monday, the 31st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

E. B. Hay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Anna L. Norville**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. EDWIN B. HAY, Bond Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,931. Administration. 26-3t

Fillmore Beall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Trueman D. Beckett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. CATHERINE E. BECKETT, 454 10th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,932. Administration. 26-3t

In the Supreme Court of the District of Columbia.

Charlotte Conrad et al. v. Minnie F. Briscoe.
Equity. No. 25,135.

Upon consideration of the report of Thomas Walker and George F. Collins, trustees, this day filed, it is, this 29th day of June, 1905, adjudged and ordered by the court that the sale thereby reported of part lot 26, in square 411, to Clement Dorsey for the sum of $1,565, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the **31st day of July, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Theophilus Bray**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. EDWIN YARNOLD, 1222 C st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,017. Administration. 26-3t

Legal Notices.

C. F. Carusi, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

Mary C. Shafer et al., by their Next Friend, John L. Sassin, v. George D. Shafer. No. 3221.

George D. Shafer, trustee, having reported that he has received from Thomas W. Barker an offer of five hundred dollars, cash, for a part of a tract of land situate in the county of Washington, District of Columbia, known as "Fox," lying adjacent to the Georgetown College property, and beginning for the same in the south line of the said college property thirty-eight feet east of the intersection of the said college property and the Foxall estate, thence south 1½° west 120.65 feet, thence east at right angles to said line 20 feet, thence north parallel to said first line 120.65 feet to the line of the college property, and thence west in a straight line to the beginning, it is by the court, this 29th day of June, A. D. 1905, adjudged, ordered, and decreed that said trustee be and he is hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to contrary be shown on or before the **29th day of July, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 26-3t

Campbell Carrington, Solicitor

In the Supreme Court of the District of Columbia.
William H. Johnson v. Alice Johnson.
No. 24,976. Equity Docket No. 56.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and the Washington Times. On motion of the complainant, by his solicitor, Campbell Carrington, it is this 28th day of June, A. D. 1905, ordered that the defendant, **Alice Johnson**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

Oscar Nauck, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Mary Cosgrove**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of June, 1905. EDWIN NAUCK, by Oscar Nauck, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,179. Administration. 26-3t

Wm. H. Baden, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Israel E. Kirk, Deceased.
No. 12,983. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by August Donath, one of the creditors of said decedent, it is ordered, this 28th day of June, A. D. 1905, that notice be and hereby is given to **William G. Kirk, Charles Mahon Kirk, Raymond Kirk, and Nell Kirk Taylor**, sole heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Tuesday, the 1st day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

Digitized by Google

Legal Notices.

Wm. A. Donch, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Mangold**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **26th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. BENJAMIN F. MANGOLD, St. Elizabeth, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,874. Administration. 26-3t

Daniel W. O'Donoghue, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James D. Sterling**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. THOMAS G. SMYTH, 2436 Pa. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,005. Administration. 26-3t

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary J. Cullen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. CATHERINE C. CULLEN, 417 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,996. Administration. 26-3t

SECOND INSERTION.

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Jane E. Williams et al., Complainants, v. Mary R. Ketner et al., Defendants. Equity No. 25,309.

John L. Cassin, trustee, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lots 4 and 5 in square 62, in the city of Washington, District of Columbia, to M. Frank Ruppert, for the sum of $1,709.70, it is, therefore, this 22d day of June, A. D. 1905, ordered that said sale will be ratified and confirmed on the **10th day of July, A. D. 1905**, unless cause to the contrary be shown on or before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

Henry S. Matthews, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Thomas B. Campbell**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 10th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of June, 1905. GEORGE J. EASTERDAY, executor, by Henry S. Matthews, attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,707. Adm. 25-3t

Legal Notices.

Geo. E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Albert T. Salter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. SARAH G. B. SALTER, 1924 I st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,997. Administration. 25-3t

Bendheim & Rothschild, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Michael Dietz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. DAVID ROTHSCHILD, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,982. Administration. 25-3t

Leckie, Fulton & Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Hannah Barnes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. CREED M. FULTON, Fendall Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,921. Administration. 25-3t

S. Herbert Giesy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice. That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Mary W. Eveleth**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1905. GUSTAVUS B. MAYNADIER, Executor, by S. Herbert Giesy, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,130. Administration. 25-3t

Andrew Y. Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Bridget Werner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. MARGARET RYAN, 103 Bank st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No 12,923. Administration. 25-3t

Digitized by Google

Legal Notices.

In the Supreme Court of the District of Columbia.

Edward Shoemaker and Elizabeth Shoemaker, Complainants, v. John Curran and Hannah Curran, his Wife; George T. Shoemaker, Jesse Shoemaker, William F. Shoemaker, Isaac W. Shoemaker and Mary Shoemaker, his Wife; Eliza Davison and John F. Davison, her Husband; Ada V. Queen and Frank Queen, her Husband; Margaret E. Fowler and William S. Fowler, her Husband; Nancy R. Shoemaker, Elwood Shoemaker, Frank W. Shoemaker, and George T. Shoemaker, Defendants.

In Equity. No. 12,480.

Upon consideration of the report of John W. Bogley and Samuel H. Bogley, trustees, herein filed, showing that they have sold so much of that tract of land as lies in the District of Columbia, which was conveyed by deed of Clement Cox and others to Jesse Shoemaker, dated the 17th day of November, 1841, and recorded among the land records of the District of Columbia, in liber 1577, at folio 235, et seq., being the same land commonly known as "Friendship," or the "Jesse Shoemaker" tract, containing about twelve and one-half acres, to John T. Meany for five hundred and one dollars ($501) per acre, it is this 22d day of June, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **10th day of July, A. D. 1905**; provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

F. Walter Brandenburg, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Walter Weston**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of June, 1905. EDWARD L. WESTON, by F. Walter Brandenburg, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,148. Administration. 25-3t

Weston Flint, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William B. Brown, Deceased.
No. 11,108. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on said estate, by Weston B. Flint, it is ordered this 22d day of June, A. D. 1905, that notice be and hereby is given to **Mrs. Nannie B. Sabine**, and to all others concerned, to appear in said court on **Monday, the 24th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

Alex. Muncaster, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary Schnappauf**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ALEXANDER MUNCASTER, 482 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,000. Administration. 25-3t

Legal Notices.

Lester & Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes M. Beuchert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of June, 1905. JOHN A. RUPPERT, 726 9th st. N. E.; LENA BEUCHERT, 722 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,867. Administration. 25-3t

Chas. W. Darr and Alex. Wolf, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Curtis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **20th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of June, 1905. ALEXANDER WOLF, Jenifer Bldg.; CHARLES W. DARR, 707 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,974. Administration. 25-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Hugh Masterson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1905. ALICE E. MASTERSON, 1529 32d st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,303. Administration. 25-3t

A. B. Duvall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James S. Robinson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ANDREW B. DUVALL, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,978. Administration. 25-3t

THIRD INSERTION.

Thomas P. Woodward and W. Mosby Williams, Solicitors

In the Supreme Court of the District of Columbia.
Georgine Simms et al. v. Elizabeth Taylor et al.
Equity 23,817.

W. Mosby Williams and William C. Martin, trustees, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lot 15 in Corcoran's subdivision in square 587, Washington City, District of Columbia, to William J. Howard, for the sum of $1,876. It is, therefore, this 5th day of June, 1905, ordered that said sale will be ratified and confirmed on the **3d day of July, 1905**, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. By the Court: WENDELL P. STAFFORD, Associate Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

Digitized by Google

Legal Notices.

H. Prescott Gatley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **James Augustin Greer**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of June, 1905. JAMES W. GREER, EDWARD R. GREER, by H. Prescott Gatley, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,284. Admr. 21-3t

Wm. M. Lewin, Attorney

In the Supreme Court of the District of Columbia.
John Turnbull, Jr., John T. Uthman, Daniel H. Doyle, and Samuel R. Waite, heretofore Copartners trading under the firm name of John Turnbull, Jr., & Co., Plaintiffs, v. Samuel A. Nattans, Defendant.
At Law, Numbered 47,722.

The object of this suit is the recovery from the defendant by the plaintiffs of the amount of a judgment recovered by the plaintiffs against the defendant, April 29, 1903, in the Superior Court of Baltimore city, Maryland, to wit, $829.55, with interest on $819.80 thereof from April 29, 1903, besides the costs of this suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiffs' claim. It is, therefore, this 16th day of June, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in The Washington Law Reporter for three successive weeks. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 24-3t

John M. George, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles B. Hinton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. ELIZABETH HOEKE, 336 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,840. Administration. 24-3t

Thomas Walker, Solicitor

In the Supreme Court of the District of Columbia.
Lucy Thornton v. John Thornton and Hattie Geary, alias Hattie Mathews.
No. 24,880. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 8th day of June, A. D. 1905, ordered that the defendant, **John Thornton**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Record. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 24-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Legal Notices.

Walter C. Clephane, Solicitor

In the Supeme Court of the District of Columbia.
H. Rozier Dulany, Trustee, v. John W. Pilling, Alan O. Clephane, Eliza Andrews, and the Unknown Heirs, Alienees, or Devisees of Andrew Link.
No. 25,483, Equity Docket.

The object of this suit is to declare the title to the real estate hereinafter described to be good in fee simple in the complainant by adverse possession, subject to the deed of trust in the bill of complaint described, said real estate being described as follows, to wit: the north one (1) foot six (6) inches of sublot thirty (30), and all of sublots thirty-one (31), thirty-two (32), and thirty-four (34), and the north fifty-two (52) feet of sublots thirty-five (35), thirty-six (36), and thirty-seven (37), of Andrew J. Miller's subdivision of lots twenty (20) to twenty-four (24), inclusive, of F. T. Browning, trustee's, subdivision of original lots numbered nine (9), ten (10), and eleven (11), in square numbered eighty-four (84), in the city of Washington, D. C., as said Miller's subdivision appears of record in book numbered twenty (20), at page 48 of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, by Walter C. Clephane, his solicitor, it is, this 12th day of June, A. D. 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Andrew Link, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

John R. Shield, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Bridget Reardon, Deceased.
No. 12,611. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Edward J. Duffy, it is ordered this 14th day of June, A. D. 1905, that notice be and hereby is given to **Annie Connell, Kate Philpot Elliott, and Hannah Philpot Smith**, and to all others concerned, to appear in said court on **Monday, the 17th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-3t

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.
Emma L. Elliott et al., Complainants, v. William Prout et al., Defendants.
No. 25,317. In Equity. Doc. 56.

The object of this suit is to establish of record the title of the complainants in fee simple by adverse possession to all of original lot numbered seven (7) in square numbered one thousand (1,000), improved by the two (2) dwellings, 1240-1242 on Eleventh street southeast, in the city of Washington, District of Columbia. On motion of the complainants, it is this 14th day of June, A. D. 1905, ordered that **William Prout, William King, and William Prout, Jr.**, or their respective unknown heirs, alienees, and devisees (if they be dead), cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order, good cause for shortening the period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-3t

Digitized by Google

Legal Notices.

B. P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Edward C. Halliday**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. HENRIETTA M. HALLIDAY, 1814 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,877. Administration. 24-3t

---

Philip Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Lucinda Bailey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,929. Administration. 24-3t

---

A. A. Hoehling, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel H. Griffith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. WARREN G. GRIFFITH, 611 Land Title Building, Philadelphia, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,914. Adm. 24-3t

---

Hallam & Hallam, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **George Fouse**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. PATTY C. H. FOUSE, 7 Ledyard Place, Newport, R. I. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,861. Administration. 24-3t

---

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Magdalina Fugitt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1905. JOHN P. HINKEL, 119 C st. S. E.; HENRY E. TRIPP, 410 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,937. Admin. 24-3t

Legal Notices.

Chase Roys, Solicitor

In the Supreme Court of the District of Columbia.

Daisy E. Belt v. King Wilson Belt.
Eq. No. 22,893. Eq. Doc. 51.

The object of this suit is to obtain a divorce from the bond of marriage. On motion of the complainant it is this 23d day of January, 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. (Signed) THOS. H. ANDERSON. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 24-3t

---

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Ann Slight**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1905. FLOYD E. DAVIS, 7th and E sts. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,656. Administration. 24-3t

---

F. S. Bright, Attorney

In the Supreme Court of the District of Columbia,
Holding the Probate Court.

In the Matter of the Estate of Samuel Thomas Labby, Deceased. No. 12,988.

Application having been made to the Supreme Court of the District of Columbia, holding the Probate Court, by Gustavus E. Labby and Morris H Labby, brothers of the decedent, for the granting of letters of administration on said estate to F. S. Bright, it is ordered this 13th day of June, 1905, that notice be and hereby is given to **Ella Cabell Miller, daughter of, and Robert, Brandon, Lewis, William, Joyce, Garnett, and Nannie, grandchildren of Mary Joyce Neville; H. Denison Cole, Francis and Walter Denmead, Harold and Florence Denmead, Margaret and Elizabeth Amos, and any other unknown heirs at law and next of kin of said Samuel Thomas Labby, deceased**, and to all others concerned, to appear in said court on **July 17, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Baltimore Sun once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 24-3t

---

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Jennie R. Willoughby et al., Complainants, v. Philip H. Mires et al., Defendants. No. 25,437. Equity Docket 56.

The object of this suit is to establish the title of the complainant to original lots 11 and 12 in square 61 in the city of Washington, District of Columbia, to be good in fee simple in the complainants by adverse possession. On motion of the complainants, by Barnard & Johnson, their solicitors, it is by the court, this 14th day of June, A. D. 1905, ordered that **Philip H. Mires, Philip Meyer, George Burnes, Christian Hines, Michael Myers, Matthew Hines, and William Robertson**, or if they be dead, their unknown heirs, alienees, and devisees, and each of them, cause their appearance to be entered herein on or before the first rule day occurring forty (40) days after the first publication of this order, exclusive of Sundays and legal holidays; otherwise this cause will be proceeded with as in case of default. The court is satisfied by good cause shown by the affidavit filed herein that it is not necessary that this order should be published at least twice a month during the period of not less than three (3) months. This order shall be published once a week for four (4) successive weeks before said rule day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 27

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JULY 7, 1905

CONTENTS.

Editorial 417
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Elizabeth B. Smith, admx., etc., appellant, v. The District of Columbia 418
Thos. E. Waggaman, administrator, appellant, v. Henry M. Earle, administrator; Henry M. Earle, administrator, appellant, v. Thos. E. Waggaman, administrator 420
Francis H. Duehay, plaintiff in error, v. The District of Columbia 422
Albert McIntosh, appellant, v. James W. Green 423
Mattie B. Slater et al., appellants, v. Thos. H. Rudderforth et al 424
Legal Notices 427

Ejection of Trespasser From Street Car.

In Barry v. Union Railway Company, decided by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, it appeared the plaintiff was a newsboy, 9 years of age and sui juris. He was summoned by a passenger on the rear platform of defendant's car, and boarded the same without permission from defendant for the purpose of selling said passenger a paper. He then passed through the car to the front platform and sought to sell papers to other passengers, but was discovered by the motorman, who, as testified by him, shoved him from the car while it was moving at ordinary speed, and he was seriously injured. On behalf of defendant it was testified that the plaintiff was hanging on to the outside of the car at the front truck and fell off without action by the operatives. It was conceded that the plaintiff was a trespasser. An instruction requested by the defendant, to the effect that the jury could not find for the plaintiff unless they found that the motorman, in throwing him from the front platform, was acting within the scope of his employment, was refused, and the trial court in effect instructed the jury that as matter of law the motorman in ejecting the plaintiff, represented the defendant. The appellate court holds that the plaintiff not being a passenger when ejected, defendant was not as matter of law liable for injuries wilfully or maliciously inflicted upon him, unless the only inference reasonably to be drawn from the evidence was that the motorman in ejecting the plaintiff was acting within the scope of his employment. As the inference might reasonably be drawn from the evidence that the motorman acted for the gratification of some personal feeling or motive uninfluenced by desire to serve and act in performance of a supposed obligation to his employer, the question whether the motorman acted within the scope of his employment was for the jury, and the requested instruction should have been given.

Competency of Insane Person as Witness.

In a murder case on trial recently in the courts of New Jersey the rather unusual spectacle was presented of an insane person taking the stand and testifying as a witness. The testimony was strenuously objected to by counsel for the defendant, who produced several expert witnesses to show that the witness, Taggart, could not appreciate the sanctity of an oath and could not be relied upon to relate accurately from memory occurrences that had happened some months before. For the State a medical witness was called who testified that he was fully convinced of the competency of Taggart to testify. Chief Justice Gummere decided to place Taggart on the stand for the purpose of determining in open court his capacity to act as a witness, and after a test most satisfactory to the court he was permitted to testify as a witness for the State, and gave most material evidence. The propriety of the course adopted by the chief justice, making as it did for substantial justice, would seem to be beyond question. The rigid exclusion of testimony by insane persons would in some cases result in a miscarriage of justice. In the case on trial before him five attendants at a hospital for the insane were accused of killing a patient in the institution, and it is conceivable that in such a case the only evidence that could be produced to prove the charge would be that of persons mentally affected. The true rule on the subject would seem to be, as stated by the Albany Law Journal, that insanity goes to the credibility rather than to the competency of a witness, and that if an insane person has sufficient understanding to appreciate the nature and obligation of an oath, and to be capable of giving a correct account of the matters which he has heard or seen in reference to the question at issue, he is admissible as a witness; and this is very properly determined by an examination in open court.

Digitized by Google

Court of Appeals of the District of Columbia.

ELIZABETH B. SMITH, ADMX., ETC., APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

MUNICIPAL CORPORATIONS; NEGLIGENCE; LIABILITY FOR IMPROPER CONSTRUCTION OF STREET RAILWAY.

1. No duty was imposed upon the municipality of the District of Columbia by the provision of the act of Congress incorporating the Georgetown and Tenallytown Railroad Company, providing that the construction of said road should be subject to the supervision and approval of the Commissioners of the District; and the Commissioners, in the discharge of that duty, acted not as the official representatives or agents of the municipality, but as the chosen agents or representatives of Congress.
2. In an action for injuries to a passenger on said railway, causing his death, it was sought to hold the District liable on the ground that it was its duty, through its Commissioners, to regulate the manner of the construction and maintenance of the tracks of said railway and the selection and operation of the cars used thereon, and that it had failed in the performance of that duty. *Held*, that no such duty was imposed upon the municipality, and the trial court properly directed a verdict in its favor.

No. 1418. Decided April 11, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,257, entered upon a verdict directed by the court in an action for injuries causing death. Affirmed.

Mr. C. A. Douglass, *Mr. E. S. Douglass*, and *L. H. David*, for the appellant.

Mr. A. B. Duvall and *Mr. E. H. Thomas* for the appellee.

Mr. Justice ANDERSON, of the Supreme Court of the District of Columbia, who sat with the court in the absence of Mr. Chief Justice ALVEY, delivered the opinion of the Court:

This case is before the court on appeal from a final judgment of the court below, in a suit at law brought under the statute by the appellant as administrator of the estate of Peter A. Smith to recover compensation for the death of the latter claimed to have resulted from an alleged omission of duty by the District of Columbia.

On the 1st of July, 1901, about 9 o'clock in the evening, the appellant's intestate was a passenger upon a north-bound car of the Georgetown and Tennallytown Railway Company, and was seated upon the rear seat of the car on the west side thereof, with his elbow resting upon the west guard-rail, when the car passed another car going in the opposite direction. While the cars were passing there was a swaying motion which caused them to almost touch one another, and the upright posts or other portions of the south-bound car struck the elbow of the deceased, dragging him over said guard-rail, between the cars, and throwing him upon the street, causing injuries which resulted in his immediate death. The testimony further showed that the distance between the inner rails of the tracks at the point of the accident was three feet and seven inches, and that from the time of the construction of the tracks until about six or eight months prior to the accident small cars were used thereon, but about six or eight months before the accident these cars were replaced by larger cars, which in passing each other at this point came within a distance of two and one-half inches of touching. And the appellant thereupon offered in evidence, and they were received without objection, the acts of Congress under which said railway company was incorporated and the construction of the railway authorized.

At the conclusion of the testimony on behalf of the appellant, the District of Columbia, by its counsel, moved the court to instruct the jury to return a verdict in its favor on the ground that no case had been made out against it. The motion was granted, a verdict rendered in accordance with the instructions, and judgment entered upon the verdict. From this judgment the present appeal has been prosecuted.

It is contended on behalf of the appellant that the District is, and was at the time of the accident, a body corporate and municipal and had the power, and it was its duty, both under the general law and under the special acts incorporating the railway company, through its commissioners, to regulate the manner of the construction and maintenance of railway tracks in the streets of the city and the selection and operation of the cars used thereon, and that because of default in the performance of such duty the municipality is liable in damages for the injuries resulting in the death of appellant's intestate.

The act of Congress approved August 10, 1888, under which the railway company was incorporated, authorized it "to construct and lay down a single or double track railway, with necessary switches, turn-outs, and other mechanical devices for operating the same by cable or electric power, for carrying passengers in the District of Columbia from the Potomac River, near High street, to and along High street, in Georgetown, to the Tennallytown road, but wholly outside the limits of said road; and along the side of the said road to the District line; also the privilege of laying such conduits beneath the surface of Water street for the purpose of conveying or communicating power from any suitable point along said Water street to said High street, as may be found necessary, and subject to the approval of the Commissioners of the District of Columbia. . . . Said railway shall be constructed of good materials and in a substantial manner, with rails of the most approved pattern, the gage to correspond with that of other city railroads, all to be approved by the Commissioners of the District of Columbia. . . . It shall also be lawful for said corporation, its successors, or assigns, to erect and maintain at such convenient and suitable points along the line as may seem most desirable to the board of directors of said corporation, and subject to the approval of the Commissioners of the District, an engine house or houses, boiler house, and other buildings necessary for the successful operation of such cable or electric road. . . . The said company shall place first-class cars on said railway, with all modern improvements, for the convenience and comfort of passengers, and shall run cars thereon as often as the public convenience may require, and according to a published schedule to be filed with the District Commissioners and be approved by them. . . .

Digitized by Google

Said company shall have at all times the free and uninterrupted use of the railway."

And by act of Congress, approved March 24, 1890, the charter of this railway company was amended, "by substituting after the words, 'and along High street, in Georgetown, to the Tennallytown road,' the words, 'and thence along and in said roads,' for the words, 'but wholly outside of the limits of said road and along the side of said way.' Provided, That the inner line of rails shall be at the minimum distance of eight feet from the center of the improved roadway. And provided further, That said railway shall be located on such side of the roadway as may be indicated by the Commissioners of the District of Columbia."

It will be noted that this grant of the railway company was not a municipal but a private Congressional grant. The municipality had no voice in granting the privilege thereby conferred upon the railway company, and was equally impotent to restrain or terminate their enjoyment. No express duty was thereby imposed upon the municipality, and certainly none can be implied. Congress having sole power to bestow this grant had like power to nominate its own agents subject to whose approval said railway was to be constructed. And therefore it was that Congress designated the Commissioners of the District of Columbia as such agent, charged, not with a duty that was mandatory, but with one that involved the exercise of judgment and discretion. It was plainly not a ministerial but a judicial function imposed upon the Commissioners as individuals, and not as the official representatives and agents of the municipality.

As was said by the Supreme Court of the United States in the case of District of Columbia v. Bailey, 171 U. S. 176:

"The sum of the municipal powers of the District of Columbia are neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials."

Congress has repeatedly conferred similar authority upon other federal officials in respect of private grants of franchises in the District of Columbia. For instance, Congress provided that the construction of the Washington and Georgetown Railroad, the Columbia Railroad, and the Metropolitan Railroad, should in each case be approved by the Secretary of the Interior. Again, in 1892 the Metropolitan Railroad was required to repair its bridge across Rock Creek in accordance with plans and specifications prepared by the Engineer Commissioner of the District of Columbia and under his direction.

Since it is manifest that no municipal obligation was created by the acts of Congress just referred to, in which the Secretary of the Interior and the Engineer Commissioner were, respectively, designated agents of Congress in supervising and approving the construction of the railways and bridge work therein provided for, upon what principle can it be said that the case at bar is differentiated from those just cited on the grounds that the agents designated by Congress in the act under conideration chance to be the Commissioners of the District of Columbia? It is manifest from the language of the acts of Congress already quoted that the authority therein given was not to the municipality but rather a superadded obligation laid upon the Commissioners as the chosen agents or representatives of Congress.

In McGraw v. District of Columbia, 3 App. Cas. (D. C.), 408: 22 Wash. Law Rep. 383, this court said:

"And even if it should be assumed that there was a duty imposed by it (the act of Congress) from which a liability might accrue, it is not at all clear that the District of Columbia is charged with that duty which was laid by express terms not on the District as a municipality, but upon the Commissioners of the District as a superadded obligation."

Again, in the case of District of Columbia v. Moulton, 15 App. Cas. (D. C.), 374: 27 Wash. Law Rep. 753, this court said:

"In a doubtful case the recovery ought not to pass against the municipality. It is only where there is a plain and obvious neglect of duty on the part of the municipal agents that liability can arise in such a case as the present."

So in the case at bar it can not be said that the Commissioners were guilty of a neglect of duty, much less the District of Columbia, in permitting the use of these larger cars when the act itself conferred upon them no control thereover. A careful reading of the act of Congress, approved August 10, 1888, above quoted, shows that, while the construction of the railway tracks, with the necessary switches, etc., the laying of conduits, as therein provided, and the erection and maintenance of an engine house or houses, boiler house, and other buildings necessary for the successful operation of such cable or electric road, were subject to the approval of the District Commissioners, they were given no control over or authority to approve or disapprove the cars to be placed upon the tracks, the language of the act in this respect being: "Said company shall place first-class cars on said railway with all modern improvements for the convenience and comfort of passengers," and the only authority conferred upon them by the act as to the operation of the road when completed being to approve the company time schedule, as thus expressed in the act, "and it (the railway company) shall run cars thereon as often as the public convenience may require. And according to a published schedule to be filed with the District Commissioners and be approved by them."

It is to be further observed that not only is there no proof whatever of any other accident previously occurring by reason of the proximity of the tracks or the running of the larger cars, and not only was there no notice, express or constructive, to either the Commissioners or the municipality, of any probable or threatened danger at the place of accident, but it is quite clear that neither the closeness of the tracks nor the size of the cars operated upon the tracks constituted the proximate cause of the accident, for the reason that such accident could, and would, have been avoided had the railway company exercised ordinary and proper care in controlling the movement of its cars at that point. One of the cars could have been brought

Digitized by Google

to a full stop while the other passed over that part of the tracks, or the movement of the cars slowed down, or other reasonable precautionary measures taken, so as to safeguard the passengers from accident, and it was the duty of the railway company to take such precautionary measures. The closeness of the tracks and the size of the cars operated thereupon constituted mere conditions, and not causes. The efficient cause producing the injury was manifestly either the decedent's own negligence or the negligence of the railway company.

Finding no error in the judgment below, it must be affirmed with costs, and it is so ordered.

Affirmed.

THOMAS E. WAGGAMAN, ADMINISTRATOR, APPELLANT,

v.

HENRY M. EARLE, ADMINISTRATOR.

HENRY M. EARLE, ADMINISTRATOR, APPELLANT,

v.

THOMAS E. WAGGAMAN, ADMINISTRATOR.

ACCOUNTING; AUDITOR'S REPORT; EXCEPTIONS; LOBBYING SERVICES.

1. An appellate tribunal can not consider vague and indefinite and merely general exceptions to an auditor's report.
2. In a proceeding for an accounting as to the fees received by defendant in respect of French spoliation claims, under an agreement by which defendant contracted to pay complainant 25 per cent of the fees received by him, after deducting expenses, etc., held that the allowance of certain amounts for which credit was claimed by defendant as having been paid for "professional services," held improper for the reason that the services were of the kind known as lobbying services.

Nos. 1422 and 1423. Decided May 00, 1905.

APPEAL and cross-appeal from a decree of the Supreme Court of the District of Columbia, in Equity, No. 21,962, in suit for an accounting. Reversed.

Mr. Irving Williamson, *Mr. Wm. J. Miller*, *Mr. S. T. Thomas*, and *Mr. M. J. Colbert* for the appellant Waggaman.

Mr. John C. Gittings for the appellant Earle.

Mr. Justice MORRIS delivered the opinion of the Court:

These are cross-appeals from one and the same decree of the Supreme Court of the District in a proceeding in equity for accounting between the parties.

It appears from the record that James H. Causten, long since deceased, and formerly a resident of this District, had accumulated papers deemed to be of great value with reference to the numerous claims against the United States known as the "French Spoliation Claims," growing out of the treaty of ——— between France and the United States. Under some arrangement between his legal representatives and Mr. William E. Earle, now deceased, but formerly a lawyer resident in this city and District, these papers came into the hands of Mr. Earle. In course of time Thomas E. Waggaman was appointed administrator de bonis non with the will annexed of James H. Causten; and as the times seemed to have become more propitious than they had been for the allowance and payment of the claims in question, Waggaman, as administrator, with the ratification and approval of the Orphans' Court, entered into a contract in writing with Earle, whereby the latter was to have the continued possession of the Causten papers for use in the prosecution of the French spoliation claims, of all or nearly all of which he had then acquired, or afterwards acquired, the charge and control; and for such continued possession and use he was to pay to Waggaman 25 per centum of all the fees which he should receive on account of these claims, "after deducting the proper expenses incurred by him since the passage of the act of Congress referring said cases to the Court of Claims (act of January 20, 1885, 23 Stat. 283), in the prosecution of said French spoliation claims, such as clerk hire, printing, advertising, office rent, and the compensation of other attorneys necessarily associated with him, and in whose compensation said Earle does not share."

It was a further provision of the agreement that Earle should keep books of account of the expenses incidental to the prosecution of the claims, which should be open at all times to the inspection of Causten's administrator; and that settlements should be made every six months and the proportionate share of the fees paid to the administrator. This provision, so far as the semi-annual payments were concerned, was not observed; and Waggaman was not satisfied with the manner in which the books were kept.

The agreement was entered into on June 12, 1885, and Earle died on August —, 1894. In the meantime a large number of the claims had been prosecuted to a successful issue in the Court of Claims, and had been certified back to Congress for its final action thereon and for an appropriation for their payment, in the event of the approval by Congress of the action of the Court of Claims. By an act of March 3, 1891 (26 Stat. p. 897), Congress approved in part the findings of the court, which were only findings, and not formal judgments, and made an appropriation for partial payment. Out of this appropriation, according to his own showing at the time to Waggaman, Mr. Earle received as fees up to July, 1893, the sum of $38,745.63, while his books showed expenditures to the date last mentioned amounting to $57,318.66. Instead of the surplus to be divided, there was therefore a deficiency of upwards of $18,000. Fees, however, to the amount of nearly $50,000 were anticipated from an additional appropriation which it was hoped would be made in 1893, but which was not made. And there was no further appropriation until 1899, upwards of four years after Earle's death, when, under an appropriation act of March 3, 1899 (30 Stat. p. 1191), fees were received by the administrator of Earle amounting to $50,176.64.

Thereafter negotiations for a settlement between Earle's administrator and Causten's administrator having proved abortive, the present proceeding was instituted by the latter for an accounting. After pleadings in due form, the cause was referred to the auditor of the court

Digitized by Google

for the statement of an account, and that officer, after considerable testimony had been adduced which was returned to the court with his report, found the sum of $7,462.20 to be due from the defendant to the complainant. Exceptions were filed by both parties which will be noticed more in detail hereafter. The court overruled them all and ratified the auditor's report without any order or decree for the payment of the amount so found due, and from the order of ratification both parties have appealed to this court.

The complainant Waggaman filed nine exceptions to the auditor's report; the defendant Earle filed six. We will first consider those of the complainant.

1. The first of the complainant's exceptions is to the allowance of $3,448.17 for office rent claimed to have been paid by Earle from August 1, 1885, soon after the agreement became effective, to August 1, 1893, the month and year in which Earle died. It is argued that Earle was a lawyer in general practice presumably maintaining an office for that purpose; that his whole office rent was $45 a month; that more than two-thirds of this, or $35.96 a month is charged against the Causten contract, and that one-half of this sum would have been a sufficient allowance. But the contract provides for the allowance of "office rent," and it is in evidence that Earle had little or no other legal business except that of the French spoliation claims. His office seems to have been maintained almost exclusively for the prosecution of those claims, and we do not find that four fifths, or thereabouts, of the $45 which he paid each month is an exorbitant charge against the business, which was almost his exclusive business. In the ultimate analysis, this is only a charge of about one-fifth of the rent against the Causten estate. We regard this exception as having been properly overruled.

2, 3. The second exception is to the allowance of items of "office expenses" amounting to $18,332.15, alleged to have been incurred to July 15, 1893, just before Earle's death; and the fourth exception, which is of a similar character, is to the allowance of a similar aggregate of items, amounting to $1,993.39, claimed to have been incurred between July 15, 1893, and November 1, 1900. And these are objected to for the reason that there is no sufficient proof of them, and that it was incumbent upon the defendant to adduce such proof. Undoubtedly it is the law that upon him who would make a charge against another lies the burden of proof that the charge is just. In this case, by his agreement, Earle undertook to keep proper books of account, which on their face would show the propriety of the items of expense which he would charge against the other contracting party; and it may well be that, in this aggregate sum of $20,325.54 there are numerous items which should not have been included in the account. But there are numerous other items, such as for printing and copying, for example, which are undoubtedly just and proper. But some allowance must be made for the difficulties of proof resulting from Mr. Earle's death, and other circumstances referred to in testimony; and the case is a proper one for us, in the hearing in this court, to apply the rule laid down and applied in the case of Richardson v. Van Auken, 5 D. C. App. 209: 23 Wash. Law Rep. 102, and in the several cases there cited, that an appellate tribunal can not consider vague and indefinite and merely general exceptions to an auditor's report. This court can not substitute itself for the auditor, and go over the details of an account for itself, beyond what it specifically pointed out as error.

In the case of Richardson v. Van Auken, above cited, it was said: "The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand, unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." We see no reason why this rule should not be applied to the complainant's second and third exceptions and the assignments of error based upon them. These exceptions are too general.

4, 5. The complainant's fourth exception is to the allowance of a sum of $6,150, paid by Mr. Earle during a period of eight years to Mr. William T. S. Curtis, which is less than at the rate of $65 a month; and his fifth exception is to the allowance of a sum of $10,400, paid by him during the same period to T. J. Pickett for similar clerical services, and ultimately also for legal services as an associate attorney, which is at the rate of a little over $100 a month. These compensations do not seem to be excessive. Curtis and Pickett testified that they rendered the services; that those services were practically continuous and engrossing enough, and that they received the money for them from Earle. In the absence of countervailing proof by the complainant, it is difficult to see why these items of expense should be held unreasonable. The contract provided for the allowance of "clerk hire" and for compensation to assistant attorneys, and we fail to see wherein the auditor has erred in these two allowances to the defendant.

6, 7, 8. The sixth, seventh, and eighth exceptions of the complainant are to three several allowances—one for $2,000, a second for $2,500, and a third for $2,000—to three several persons, claimed to be for "professional services" rendered by them. We find it impossible to read the record without coming to the conclusion that these alleged services were of the kind known as "lobying services." The proof, indeed, in regard to them is of the vaguest character, and utterly insufficient in any event to support them as proper charges in this accounting. But, so far as it goes, it points unmistakably to those illicit services, personal influence and personal solicitation, which the courts have branded as improper for their consideration, and for which they will not allow recovery. It is a peculiar fact that no one of the persons to whom these several sums are claimed to have been paid was called to testify in regard to them, although they were all accessible and could easily have been summoned. The inference from this omission is not favorable to the defendant's claim for these allowances.

There is some feeble pretense that one of the parties prepared a brief for use before one of the

Digitized by Google

committees of Congress, but it is the merest pretense and wholly unworthy of consideration. There is no reason to suppose that a copy of the brief could not have been produced if it ever existed, nor does it appear what exigency there was for the preparation of such a brief.

If these alleged services were legitimate and professional, it is not apparent why they could not have been rendered by Mr. Earle himself. He was fully competent, and his contract with Waggaman included them. If, on the contrary, they were of the lobbying kind and illegitimate, they should not be allowed. In either case they are improper charges against the interest represented by the complainant. In fact, as disclosed by the record, Mr. Earle, during his lifetime, in his communications with some of the persons interested in the Causten estate, admitted the true character of these expenditures, and sought in vain to have them legitimated and recognized.

Under the decision of this court in the case of Owens v. Wilkinson, 20 D. C. App. 51: 30 Wash. Law Rep. 436, and under the decisions therein cited, we must hold that these items should have been excluded from this account, and that it was error to admit them.

9. The complainant's ninth and last exception was to an allowance of $700 to one L. B. Clark for his expense and compensation for making some investigation among the records of the custom houses in Rhode Island and Connecticut in connection with the French spoliation claims. The special purpose of this investigation is not fully disclosed; but the item on its face is not unreasonable, and under the rule heretofore stated, it is incumbent in this court upon the complainant to show the impropriety of its allowance. This has not been done, and we can not disturb the finding.

10. The defendant filed six exceptions, and bases assignments of error upon each and all of them. It would subserve no good purpose to consider them in detail. It must suffice to say that we regard no one of them as well founded. Some of them are directed to the refusal of the auditor to allow for certain alleged services, evidently of a lobbying character, but which he regarded as more objectionable than those which he allowed and which we hold should have been excluded from the account.

There is considerable insistence by the defendant upon the supposed laches of the complainant, that is, his delay in the institution of proceedings to enforce his claim; and the benefit of the Statute of Limitations is sought by him, not in his answer to the bill or anywhere in the pleadings, but only in argument. But if there are any laches in this case, they are the laches rather of the defendant than of the complainant. It was claimed by Mr. William E. Earle, and the statement is reasserted by the defendant in his brief, that up to July, 1893, there was no surplus of fees to be divided with the Causten estate, but rather a deficit of upwards of $18,000. Now, if this statement was correct, there was nothing to be divided until after the passage of the appropriation bill of March 3, 1899; if it was not true, the statement was a fraud, which the complainant would seem to have no opportunity to discover at the time. Assuming the statement to have been true, and that there was no money to be divided before March 3, 1899, we fail to see wherein there are any laches on the part of the complainant, who thereupon, after some fruitless negotiations with the defendant, filed the present suit within two years thereafter, on January 2, 1901. There is no ground for the imputation of laches.

Except in the one feature of the allowance of certain fees for lobbying services, we find no error in the auditor's report or in the order of the court below ratifying the same. But for this error the order appealed from must be reversed, with costs against the defendant Earle; and the cause will be remanded to the Supreme Court of the District with directions to reform its order in that regard and to enter a decree in accordance with this opinion. And it is so ordered.

Reversed.

FRANCIS H. DUEHAY, PLAINTIFF IN ERROR,

v.

THE DISTRICT OF COLUMBIA.

Smoke Law; Apartment Houses.

An apartment house is not a "private residence" within the meaning of the proviso to what is known as the smoke law (30 Stat. 812), that the act shall not be construed as applying "to chimneys of buildings used exclusively for private residences," and such a building is therefore not exempted from the operation of that act.

No. 1524. Decided April 18, 1905.

In error to the Police Court of the District of Columbia. Affirmed.

Mr. Samuel Maddox for the plaintiff in error.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the defendant in error.

Mr. Chief Justice Shepard delivered the opinion of the Court:

This is a writ of error to review a judgment of conviction in the Police Court of the violation of what is known as the "smoke law." 30 Stat. 812.

This statute declares "the emission of dense or thick black or gray smoke or cinders from any smokestack or chimney used in connection with any stationary engine, steam boiler, or furnace of any description within the District of Columbia" to be a public nuisance, and provides a penalty therefor.

The proof shows the emission of such smoke several times on October 26, 1904, from the chimney of a building called the "Rochambeau," then owned and occupied by the plaintiff in error.

It appears from the uncontradicted testimony of the plaintiff in error, that the "Rochambeau" "is an apartment house of fire-proof construction, seven stories and basement, having eighty-one separate housekeeping apartments, all used exclusively as private residences. There is nothing of a public nature about the house—no bar, no cafe, no cigar or newspaper stands, no billiard room, no barber shop—in fact, nothing of a business nature is carried on in the house." It appears also that the building is supplied with three low-pressure boilers of

Digitized by Google

seventy horse-power each. There is one large flue or chimney about three feet by three feet in space. It is unnecessary to state other evidence relating to the character of coal used, the efforts to prevent the emission of smoke, and the unpunished violation of the law by others, as it is all irrelevant.

The single question for determination is, whether a building of the kind and uses shown is exempted from the operation of the act, under the following proviso to the section above recited substantially: "Provided, that nothing in this act shall be construed as applied to chimneys of buildings used exclusively for private residences."

Without this proviso the act is broad enough to apply not only to emissions of smoke of the character defined from the smokestacks of all large buildings, but to those, also, from the chimneys of what are known as private houses. In our opinion the proviso was intended to exclude from this application only what are generally understood to be houses of private residence equipped with the chimneys ordinarily used therein. In the construction of a statute its words are to be given, where possible, their ordinary, popular meaning.

Now, while chimney is a generic word that would include smokestack as one of its species, it is commonly applied to the smoke conduits that are attached to the mass of separate houses of ordinary size and construction.

On the other hand, the word smokestack, probably first applied to the smoke escape of railway engines, is now commonly understood as meaning, also, a chimney of unusual size and height, attached to a furnace or combination of furnaces used for supplying heat or power, or both, in a large building or series of buildings that may be used as a factory, a place for offices, or what is called an apartment or tenement house.

Congress evidently had in view this common understanding of the separate and distinct signification of the words, else it would not have used both in the body of the act. Giving effect to every word used in the act, as must be done if possible, it can not be presumed, in view of the common understanding of the difference between these words, that they were regarded as synonymous.

Turning to the proviso, it will be observed that the word chimneys, alone, is used—"the chimneys of buildings used exclusively for private residences."

The general purpose of the act is to prevent the emission of smoke and cinders in such volume as was reasonably supposed to create a public nuisance, and the proviso was added, in our opinion, because it was likewise supposed that the emission of smoke from the chimneys of those buildings commonly called and generally understood to be private residences would not constitute such a nuisance as to call for their prohibition also.

We are clearly of the opinion that it was not intended to withdraw from the application of the act those buildings commonly called apartments or tenement houses, or flats, wherein a number of private families may live in separate apartments, as in this case, enjoying the benefits of boilers and furnaces attached to one or more great chimneys or smokestacks, and supplying heat and other conveniences for the common use.

Such buildings, although their owners may not carry on in them the ordinary business of hotels in connection with the lease of apartments, are not used exclusively as private residences within the meaning of the law.

The judgment of the Police Court was right, and it will be affirmed with costs. It is so ordered.

Affirmed.

ALBERT McINTOSH, APPELLANT,

v.

JAMES W. GREEN.

EQUITY; TRUSTS; EVIDENCE.

A decree dismissing a bill in equity on the ground that there was no foundation upon which to raise a resulting trust, and that the attempt was to create an express trust in land by parol, affirmed.

No. 1511. Decided May 2, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,258, dismissing a bill to declare a trust in certain real estate. Affirmed.

Mr. Joseph H. Stewart for the appellant.

Mr. M. T. Clinkscales for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree dismissing a bill to declare a trust in certain lands in the District of Columbia and compel a conveyance of the legal title.

The bill alleged that in June, 1902, complainant, through an agent, entered into an agreement with the Union Savings Bank to purchase the property described as lot 41 in Wright and Cox's subdivision of Pleasant Plains, for the sum of $2,600. That he then made an agreement with defendant whereby the latter, in consideration of $10 to be paid him, promised to take the title and thereafter to convey the same to complainant's daughter. That complainant arranged through his agent to negotiate two loans on said property, the first for $2,500 and the second for $300. That after the payment of a commission to complainant's agent, the fees of the title company, and other expenses, there was, "according to complainant's recollection," a shortage of about $40 to be paid to the title company before said company would deliver and record the conveyance. That complainant requested the defendant to lend him the said sum and promised to repay the same, whereupon defendant advanced the same and received the conveyance which was recorded. That complainant has offered to settle with defendant and to pay him the $10 agreed upon as his compensation, and the said sum of $40 advanced by him, with interest, upon condition of his execution of a conveyance of the property to complainant's daughter; all of which defendant refused.

Defendant's answer denied the alleged agreement and averred the purchase of the property wholly with money obtained and advanced by defendant, and for his own benefit.

Digitized by Google

It is unnecessary to review the evidence on behalf of the parties respectively, as we concur in the views expressed by Mr. Justice Gould, who presided in the Equity Court, in the following extract from his opinion that has been made part of the record: "Without passing upon the question of fact involved in this testimony, or considering whether the testimony preponderates in plaintiff's favor or not, I am of the opinion that plaintiff's bill must be dismissed. His case is obviously bottomed upon the theory of a resulting trust, which arises when the purchaser of an estate pays the purchase money and takes the title in the name of a third person. . . . In this case, plaintiff himself testified that he did not contribute a cent towards the payment for the real estate; he certainly assumed no liability on the incumbrances which practically paid for it; and he fails to sustain the burden of proof to establish the necessary proposition that the $40 balance paid by the defendant was a loan to him. In argument, his counsel contended that his discovery of the bargain whereby the purchaser could become the owner of the real estate by the use of money borrowed from others was such a contribution; in other words, that his information through which the property was obtained was such a valuable contribution towards the purchase price that he is entitled to credit therefor. But this view entirely mistakes the theory of a resulting trust. The purchase price goes to the vendor, not to the vendee of the legal title. As between one attempting to set up the resulting trust and his alleged trustee, the information furnished by the former to the latter in regard to the property might be a sufficient consideration to support a contract between them, provided such contract was in the form required by law when an interest in real estate is involved. But such 'information' is no part of the consideration of the deed from the original grantor, the payment of which by the cestui que trust is the basis of a resulting trust."

The learned justice was clearly right in the conclusion that there was no foundation upon which to raise up a resulting trust, and that the case resolved itself into an attempt to create an express trust in land by parol against the prohibition of the Statute of Frauds. Howland v. Blake, 97 U. S. 624, 628; 1 Perry on Trusts (4 ed.), sec. 134; McCartney v. Fletcher, 11 App. D. C. 1, 20: 25 Wash. Law Rep. 327.

In Howland v. Blake, the claim was that one Taylor, under a mortgage executed to him by Howland, had purchased the mortgaged property at foreclosure sale, and taken a conveyance under an oral agreement with Howland that the premises should still be held as security for the money due, and reconveyed upon extinguishment of the debt. Taylor, needing the money shortly thereafter, requested Howland to procure its advance by some other purchaser. Howland informed Blake and Elliott of the aforesaid facts, and requested them to advance the money and take Taylor's place under an absolute conveyance. They paid Blake and received the conveyance under an oral agreement to hold the property as Taylor had done. The court held that Howland's bill was rightly dismissed, saying: "Such an agreement is one creating by parol a trust or interest in lands which can not be sustained under the Statute of Frauds. It is a naked promise by one to buy lands in his own name, pay for them with his own money, and hold them for the benefit of another. It can not be enforced in equity and is void."

The facts in the case at bar bring it entirely within the rule above declared, and the decree must be affirmed with costs. It is so ordered. Affirmed.

MATTIE R. SLATER ET AL., APPELLANTS, v. THOMAS H. RUDDERFORTH ET AL.

ESTATES; RULE IN SHELLY'S CASE; TRUSTS FOR MARRIED WOMEN; DEEDS; WANT OF CONSIDERATION.

1. The rule in Shelly's case does not apply where one of the estates sought to be carried out is equitable and the other is legal.
2. A devise in trust to permit a female, in case she should reach the age of 16 years, to use and occupy the premises and the rents, issues, and profits thereof to receive and apply to her own sole and separate use, any coverture notwithstanding, for her life, and upon her death leaving lawful issue to convey the same to such issue, his, her, or their heirs and assigns, is not a passive but an active trust; and the rule in Shelly's case does not apply.
3. A deed executed by the remaindermen, three of whom were minors, who on coming of age repudiated and disavowed it, set aside as being wholly without consideration and as having been induced by misrepresentation, and a reconveyance directed.

No. 1493. Decided May 2, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,636, in suit to set aside a deed for fraud. Affirmed.

Mr. O. B. Hallam and *Mr. F. E. Mitchell* for the appellants.

Mr. W. W. Edwards and *Mr. C. M. Fulton* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit in equity instituted in the Supreme Court of the District by the appellees as complainants against the appellants, and three other persons who were brought in by amendment, as defendants, for the cancellation of certain deeds, whereby the appellant, Mattie G. Slater, through the procurement of her husband, the coappellant John G. Slater, had become possessed of certain real estate in the city of Washington, and for the reconveyance and delivery of said real estate to the complainants as the true and lawful owners thereof.

It appears from the record that on and before the 28th day of May, A. D. 1898, the appellees and their mother, Emma F. Rudderforth, subsequently deceased, were the owners of the property in question and in possession of it under the will of one William Mockabee, of which will the clause which conveyed the said property to them, and which is important in these proceedings, is in the following words:

"I give and devise to my friend Ammon Green, of the city of Washington in the District of Columbia, and to his heirs and assigns, the following described part of lot of ground numbered three (3) of Berry and Mohun's subdivision of square of ground numbered seven hundred and seventeen (717) situate, lying and

Digitized by Google

being in the said city of Washington, to wit: Beginning for said part of the said lot of ground at the southwest corner of said lot and running thence north with the line of First street east, fifteen feet; thence east fifty-three feet, ten and a half inches, thence southwestwardly fifteen feet and one inch, and thence westerly to the place of beginning.

"To have and to hold the said part of said lot of ground and premises, together with the buildings and improvements thereon, unto the said Ammon Green, his heirs and assigns, upon the trusts and confidence hereinafter named, and none other. That is to say, in trust to receive and collect the rents thereof and apply the same towards the payment of my said debts, funeral expenses, the legacy hereinbefore bequeathed and the maintenance and support of my son William H. C. Mockabee, until Emma Smitson, who during the lifetime of my late wife, was an inmate of my house, and who is now about seven years of age, shall attain to the age of sixteen years; and upon the further trust, in case the said Emma Smitson shall live to attain to the said age of sixteen years, to suffer and permit her, the said Emma, to have, hold, use, occupy, possess and enjoy the said part of said lot of ground and premises and the rents, issues and profits thereof to have, take, receive and apply to her own sole and separate use, any coverture notwithstanding, for and during the term of her natural life; and upon the further trust and confidence, in case the said Emma after attaining to the age of sixteen years shall die leaving lawful issue, to convey the said part of said lot of ground and premises by a good and sufficient deed to such lawful issue, his, her or their heirs and assigns; and also upon the further trust and confidence, in case the said Emma shall die, either before or after attaining to the age of sixteen years, without leaving lawful issue surviving her, to convey the said part of said lot of ground and premises by a good and sufficient deed unto my said son William H. C. Mockabee his heirs and assigns."

This will was executed in 1859, and upon the death of the testator very soon afterwards was admitted to probate in the same year. Emma Smitson lived to enjoy the devise in her favor, became by marriage Mrs. Emma F. Rudderforth, and died on February 15, 1902, leaving as her lawful issue surviving her five children, who are the complainants in this case and the appellees here.

On or about May 28, 1898, Mrs. Emma F. Rudderforth was approached by the appellant, John G. Slater, and as it is alleged in the bill of complaint, was induced by false and fraudulent representation on his part, which, however, he denies, to make a conveyance to him of the said property, which is stated to have been worth the sum of about $1,500, for the grossly inadequate sum of $150, and the settlement of some taxes in arrears. The allegation is that it was represented to her by Slater that, by the accumulation of taxes, she was in danger of losing the property and being turned out of it; and also that there was a judgment of a justice of the peace against her which was about to be enforced against the property. Thereupon, and, as it is alleged, in pursuance of these representations, Mrs. Emma F. Rudderforth executed the required deed of conveyance, not directly to Slater, but to another person, who in turn conveyed to a third person, who in his turn conveyed to Mrs. Mattie R. Slater. All these subsequent conveyances were wholly without consideration, and there is scarcely a pretense that they were not all for the use and benefit of John G. Slater.

Slater, however, was not satisfied with the deed from Mrs. Emma F. Rudderforth. Upon the pretense, as alleged, that a conveyance from her children also was necessary, although he stated that they had no interest in the property and that the deed from them was a mere formality, they were induced to join in the conveyance with their mother. The sum of $150 was paid to the mother, but no one of the children received anything; and as to them the conveyance was wholly without consideration of any kind. Only two of the children were then of age, three of them were under age, and one of the three was only 16 years old. The fact of this minority seems to have been well known to Slater, and it appears that he asked one at least of the minor children whether he would not ratify the deed after he became of age, and that the boy answered that he would do so.

By an instrument of writing under seal, recorded among the land records of the District, on June 25, 1901, the appellees joined in a deed disavowing and repudiating their deed of conveyance; and on February 15, 1902, Mrs. Emma F. Rudderforth died. Thereupon, on November 26, 1902, the appellees instituted the present proceedings to enforce their rights to the property. One of the complainants, Frank W. Rudderforth, was yet a minor, and he sued by next friend. He became of age, however, on May 25, 1903. All the complainants, it may be noted, seem to have been in very humble circumstances, and not very intelligent as to their rights.

The defendants answered the bill of complaint, and, after testimony taken and hearing had, the court decreed in favor of the complainants, and in accordance with the prayer of their bill, and two of the five defendants, being those only who are substantially interested in the controversy, have appealed to this court.

Upon full consideration of the record before us, and of the briefs and arguments of counsel, we find no reason to come to any different conclusion from that reached by the learned justice who sat in the court below, and we might well adopt as our own the very able and satisfactory opinion rendered by him in the cause. In view of that opinion we will content ourselves with a few brief observations.

1. That Emma Smitson, afterwards Emma F. Rudderforth, took only a life estate, and not an estate in fee simple under the rule in Shelly's case, in the property here in controversy, and that upon her death the appellees, as her issue surviving her, took an estate in fee simple in remainder, we regard as too clear to be a subject of controversy. Under the will of William Mockabee she had only an equitable estate, while a legal estate in fee simple was given to her issue; and it is well-settled law, indeed it is elementary law, that the rule in Shelly's case does not apply where one of the estates sought

Digitized by Google

to be carved out is equitable and the other is legal. Sims v. Georgetown College, 1 D. C. App. 72, and cases there cited: 21 Wash. Law Rep. 595. It is sought to avoid the operation of this doctrine on the ground that the equitable estate to Emma F. Rudderforth, as it is claimed, was a passive and not an active trust, and therefore that, under the statute of 27 Henry VIII, chap. 10, the donee of the life estate must be regarded as taking a legal title. But the law is directly the reverse of this, and we have so held. Frey v. Allen, 9 D. C. App. 400: 25 Wash. Law Rep. 39; Fields v. Gwynn, 19 D. C. App. 99: 29 Wash. Law Rep. 834; Brown v. Wadsworth, 168 N. Y. 232; 4 Kent's Commentaries, p. 218; De Vaughn v. De Vaughn, 3 D. C. App. 50: 22 Wash. Law Rep. 224. A trust of this kind for a married woman is not a passive, but an active trust, to which the rule in Shelly's case does not apply. The appellees, therefore, took a legal estate in fee simple in remainder.

2. The conveyance from the appellees to the appellants was wholly without consideration, and it is impossible, under the circumstances, to believe that it was not superinduced by misrepresentation of some kind, whether intentional or unintentional. In any event it is void as to two of the three minors who executed it, for they had the right to disavow and repudiate it upon coming of age and they have exercised that right. As to the third and youngest child, it is claimed that he can not repudiate the act until he reaches his majority. But he has reached his majority, and it is sufficient evidence of repudiation on his part that he continues to prosecute this suit. A more definite act of disavowal can scarcely be supposed.

3. Even in the absence of misrepresentation, inasmuch as the conveyance by the appellees was wholly without consideration, it would have to be assumed, unless good reason to the contrary were shown, which certainly has not been shown here, that the appellants held the property as trustees for the appellees, and that they should reconvey to them.

We are of opinion that the decree of the court below was eminently right and just, and that it should be affirmed, with costs. The cause will be remanded to that court to carry it into effect. And it is so ordered.

Affirmed.

Insurance—Exception—Disease—Accident.

In the case of White v. Standard Life & Accident Insurance Company, recently decided by the Supreme Court of Minnesota, it appeared that an accident insurance policy provided that the insurer should be liable for injuries or death caused solely by accidental means, and expressly exempted the insurer from liability if death resulted wholly or in part, directly or indirectly, from any bodily disease or infirmity of the injured. The evidence in the case showed that at the time the policy was issued, and at the time of the death of the insured, which was alleged to have been the result of an accidental injury, he was affected with diabetes, and the evidence was conclusive that such disease directly cooperated with the injury in causing death. The court held that the insurer was not liable.

Sale—Commercial Traveler—Evidence.

A written contract made by a commercial traveler for the sale of a soda fountain at an agreed price and upon agreed payments, provided that "this order can not be countermanded, and this is fully understood by the signer, and there are no other conditions or agreements with your salesman except those herein stated, and no claim will be made for any goods not specified herein." The contract was made on December 17, 1903. In an action upon this contract the purchaser answered, alleging that the salesman agreed with him at the time of the making of the contract that he was to have until the first day of January thereafter to rescind the order, and agreed to insert this agreement in the writing, but through fraud or mistake he failed to do so, and that he, the defendant, at the time he signed it, believed it had been so inserted, and that within six days after the signing of the contract he notified the plaintiff in writing that he had declined to accept the fountain, which allegations were controverted. The Kentucky Court of Appeals held, in the recent case of L. A. Becker Company v. Alvey, that the burden was on the defendant to sustain his plea of fraud or mistake in the writing, and that the issue being one of fact, was properly submitted to the jury. The court held further that where a sale of property is made by a commercial traveler subject to the approval of the principal, it is a mere order for the goods, and is revocable at any time at the option of the party giving it until accepted by the principal and notice of such acceptance is given to the purchaser.

Lease—Covenant—Insurance—Increase.

The Supreme Judicial Court of Massachusetts held, in the recent case of King v. Murphy Varnish Company, that a covenant by a tenant not to do any act on the premises which would cause an increase in insurance rates not merely prohibited any change in the tenant's business methods which would increase rates of insurance, but that the maintenance of varnish tanks, because of which the insurance rate was increased, was a breach of the covenant, although the tenant maintained such tanks at the time the lease was executed and had done so for many years before. The court said: "The covenant is in general terms, and if it operates as a restriction upon the use of the premises by the defendant as it has been accustomed to use premises occupied by it, that is no reason why it should not be enforced. It provides in express terms that no act or thing shall be done by the lessee which may make any insurance on the building against fire void, or may render any increased premium payable for such insurance. We see no reason for limiting the natural import of the language used, and we think that the act of the defendant in storing varnish in tanks on the premises comes within its terms."

Brokers—Acting for Both Parties.—A real estate agent, acting for both parties without the knowledge of the owner, held not entitled to a commission from the owner. Bunn v. Keach (Ill.), 73 N. E. Rep. 419.

Digitized by Google

Master and Servant—Safe Appliances.—The duty of a master to furnish proper appliances embraces human instrumentalities.—Hyland v. Southern Bell Telephone & Telegraph Co. (S. Car.), 49 S. E. Rep. 879.

Negligence—Driving Over Child in Street—In an action for the death of infant, plaintiff must show absence of contributory negligence on the part of the deceased or of those in charge of him.—Brennan v. Standard Oil Co. (Mass.), 73 N. E. Rep. 472.

Deeds—Sufficiency of Delivery.—In case of a voluntary settlement, the law presumes much more in favor of the delivery of the deed whereby the settlement is created than it does in ordinary cases of deeds of bargain and sale. Baker v. Atwell (Ill.), 73 N. E. Rep. 351.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Malcolm Hufty, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary F. Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1905. MALCOLM HUFTY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,002. Administration. 27-3t

T. Percy Myers, Solicitor
In the Supreme Court of the District of Columbia.
Isabella Ricks v. Edward L. Edmonston et al.
In Equity, No. 24,716.

Upon consideration of the report of T. Percy Myers and Campbell Carrington, trustees, filed herein, stating that they have sold at public auction the east half of lot 23 in square 282, to Julius A. P. Dowling, Jr., as the agent for Mary A. Smith, for the sum of twenty-two hundred ($2,200) dollars, it is, by the court, this 6th day of July, A. D. 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Paul E. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Post, otherwise known as John Williams**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. NELLIE POST, 611 3d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,989. Administration. 27-3t

Legal Notices.

Chas. F. Carusi, Solicitor
In the Supreme Court of the District of Columbia.
Annie E. Ward v. Henry C. Ward, Blanche Walker.
No. 25,355. Equity Docket No. 56.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, **Henry C. Ward**, on the ground of adultery. On motion of the complainant it is this 3d day of July, A. D. 1905, ordered that the defendant, **Blanche Walker**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Levi H. David, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna H. Stewart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. ANDREW STEWART, 1420 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,994. Administration. 27-3t

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Augustine Pavese**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. L. CABELL WILLIAMSON, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,029. Administration. 27-3t

Wm. L. Pollard, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha A. Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1905. SIDNEY A. TAYLOR, 1015 3d st. N. W.; PHEOBE MILES, 818 4th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,986. Administration. 27-3t

J. A. Sweeney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Charles Ippolito, Deceased.
No. 12,968. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Benjamin F. Guy, it is ordered this 7th day of July, A. D. 1905, that notice be and hereby is given to **Raphael Ippolito, Orto Essoline, Joe Otito, and mother of Charles Ippolito**, whose name and address is unknown, but is supposed to live in Italy, and to all others concerned, to appear in said court on **Tuesday, the 8th day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 27-3t

Digitized by Google

Legal Notices

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **James H. Hopkins**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of July, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS, AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d V.-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,285. Administration. 27-3t

E. Hilton Jackson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Julia M. Adams, Deceased.
No. 13,028. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Decatur Morgan, it is ordered this 30th day of June, A. D. 1905, that notice be and hereby is given to **Charles H. Adams, Carrie M. Adams, and Frank M. Adams**, and to all others concerned, to appear in said court on **Monday, the 10th day of August, 1905, at ten o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 27-3t

SECOND INSERTION.

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Arshak Abramian**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,021. Administration. 26-3t

W. A. McKenney, Solicitor

In the Supreme Court of the District of Columbia.
American Security and Trust Co., a Corporation, Complainant, v. Willard H. Myers et al., Defendants.
No. 25,432. Equity Docket No. —.

The object of this suit is to procure a sale of the interest of the defendant, Willard H. Myers, in and to the real and personal property held by the defendant, the National Safe Deposit Savings and Trust Company of the District of Columbia as administrator de bonis non, cum testamento annexo, and as trustee, under the will of Martha P. Myers, deceased, to satisfy the judgment of the complainant against said Willard H. Myers. On motion of the complainant, it is this 19th day of June, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Legal Notices.

M. J. Keane and M. J. Colbert, Solicitors

[Filed June 22, 1905—J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia,
Holding Equity Court.

Patrick J. Daly, Complainant, v. Douglass S. Mackall, the Unknown Heirs, Alienees, and Devisees of Samuel L. Sterrett. Equity No. 24,224. Doc. 54.

The object of this suit is to declare the title of the complainant to lots thirty-three (33) and thirty-four (34) in Patrick J. Daly's subdivision of part of square 589, as per plat recorded in liber 28, folio 13, of the records of the surveyor's office for the District of Columbia, located in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is by the court, this 22d day of June, 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Samuel L. Sterrett, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this case will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Absalom Baird**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM BAIRD, State Home, Annapolis, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,022. Administration. 26-3t

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta P. Meyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. JOHN H. F. MEYER, 904 23d st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,998. Administration. 26-3t

W. H. Marlow, Jr., Solicitor

[Filed June 21, 1905. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia.
Thomas Tracy et al. v. James E. Mulligan et al.
Equity No. 24,670. Doc. 55.

Walter H. Marlow, Jr., the trustee herein, having reported sale at public auction of part of original lot one (1) in square seven hundred and forty-nine (749) in the city of Washington, District of Columbia, more fully described by metes and bounds in these proceedings, and otherwise known as lot forty-two (42) in O'Donnoghue's subdivision of said square, as per plat in Book C. H. B., page 137, in the surveyor's office of the District of Columbia, improved by house No. 1004 Third street N. E., to Edward A. Scanlon, for the sum of ten hundred and forty-five dollars ($1045), all cash; it is therefore, this twenty-first (21st) day of June, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the twenty-second (22d) day of July, 1905. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 26-3t

Digitized by Google

Legal Notices.

Wm. L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Heinrich Wilhelm Feador Dukehart, Deceased. No. 13,010. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John Waldman and H. A. Schenerman, it is ordered this 23d day of June, A. D. 1905, that notice be and hereby is given to the unknown heirs of the decedent, and to all others concerned, to appear in said court on **Monday, the 31st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

E. B. Hay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Anna L. Norville**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. EDWIN B. HAY, Bond Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,931. Administration. 26-3t

Fillmore Beall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Trueman D. Beckett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. CATHERINE E. BECKETT, 454 10th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,982. Administration. 26-3t

In the Supreme Court of the District of Columbia.

Charlotte Conrad et al. v. Minnie F. Briscoe.
Equity. No. 25,185.

Upon consideration of the report of Thomas Walker and George F. Collins, trustees, this day filed, it is, this 29th day of June, 1905, adjudged and ordered by the court that the sale thereby reported of part lot 26, in square 411, to Clement Dorsey for the sum of $1,595, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the **31st day of July, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Theophilus Bray**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. EDWIN YARNOLD, 1222 C st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,017. Administration. 26-3t

Legal Notices.

C. F. Carusi, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

Mary C. Shafer et al., by their Next Friend, John L. Sassin, v. George D. Shafer. No. 3221.

George D. Shafer, trustee, having reported that he has received from Thomas W. Barker an offer of five hundred dollars, cash, for a part of a tract of land situate in the county of Washington, District of Columbia, known as "Fox," lying adjacent to the Georgetown College property, and beginning for the same in the south line of the said college property thirty-eight feet east of the intersection of the said college property and the Foxall estate, thence south 1½° west 120.65 feet, thence east at right angles to said line 20 feet, thence north parallel to said first line 120.65 feet to the line of the college property, and thence west in a straight line to the beginning, it is by the court, this 29th day of June, A. D. 1905, adjudged, ordered, and decreed that said trustee be and he is hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to contrary be shown on or before the **29th day of July, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 26-3t

Campbell Carrington, Solicitor

In the Supreme Court of the District of Columbia.
William H. Johnson v. Alice Johnson.
No. 24,976. Equity Docket No. 56.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and the Washington Times. On motion of the complainant, by his solicitor, Campbell Carrington, it is this 28th day of June, A. D. 1905, ordered that the defendant, **Alice Johnson**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

Oscar Nauck, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Mary Cosgrove**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of June, 1905. EDWIN NAUCK, by Oscar Nauck, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,179. Administration. 26-3t

Wm. H. Baden, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Israel E. Kirk, Deceased.
No. 12,983. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by August Donath, one of the creditors of said decedent, it is ordered, this 28th day of June, A. D. 1905, that notice be and hereby is given to **William G. Kirk, Charles Mahon Kirk, Raymond Kirk, and Nell Kirk Taylor**, sole heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Tuesday, the 1st day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

Digitized by Google

Legal Notices.

R. B. Behrends, Attorney

In the Supreme Court of the District of Columbia. In Re Estate of J. K. Wilhelmina Kirchner, Deceased. No. 8794.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 13th day of April, 1898, purporting to be the last will and testament of J. K. Wilhelmina Kirchner, deceased, has been returned as to Frederick W. Boucher, Edward Boucher, and Rosa Mitchell "not to be found," it is, this 27th day of June, 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **10th day of October, 1905**, and that this order and the substance of said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter, and twice a week for the same period in The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

ISSUES.

1. Was the said paper writing propounded as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, bearing date the 13th day of April, 1898, executed by her in due form of law? 2. Was the said J. K. Wilhelmina Kirchner, at the time of the execution of said paper writing, bearing date the 13th day of April, 1898, of sound mind, and capable of executing a valid deed or contract? 3. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured through the undue influence, importunities, suggestions, and persuasions of any person or persons? 4. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured by the fraud, deceit, or misrepresentations practiced upon her by any person or persons? 26-4t

Wm. A. Donch, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Mangold**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **26th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. BENJAMIN F. MANGOLD, St. Elizabeth, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,874. Administration. 26-3t

Daniel W. O'Donoghue, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James D. Sterling**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate Given under my hand this 26th day of June, 1905. THOMAS G. SMYTH, 2436 Pa. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,005. Administration. 26-3t

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary J. Cullen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. CATHERINE C. CULLEN, 417 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,996. Administration. 26-3t

Legal Notices.

THIRD INSERTION.

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Jane E. Williams et al., Complainants, v. Mary R. Ketner et al., Defendants. Equity No. 25,309.

John L. Cassin, trustee, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lots 4 and 5 in square 62, in the city of Washington, District of Columbia, to M. Frank Ruppert, for the sum of $1,709.70, it is, therefore, this 22d day of June, A. D. 1905, ordered that said sale will be ratified and confirmed on the **10th day of July, A. D. 1905**, unless cause to the contrary be shown on or before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

Henry S. Matthews, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Thomas B. Campbell**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 10th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of June, 1905. GEORGE J. EASTERDAY, executor, by Henry S. Matthews, attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,707. Adm. 25-3t

Chas. W. Darr and Alex. Wolf, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Curtis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **20th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of June, 1905. ALEXANDER WOLF, Jenifer Bldg.; CHARLES W. DARR, 707 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,974. Administration. 25-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Hugh Masterson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1905. ALICE E. MASTERSON, 1529 32d st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,808. Administration. 25-3t

A. B. Duvall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James S. Robinson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ANDREW B. DUVALL, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,978. Administration. 25-3t

Digitized by Google

Legal Notices.

In the Supreme Court of the District of Columbia.

Edward Shoemaker and Elizabeth Shoemaker, Complainants, v. John Curran and Hannah Curran, his Wife; George T. Shoemaker, Jesse Shoemaker, William F. Shoemaker, Isaac W. Shoemaker and Mary Shoemaker, his Wife; Eliza Davison and John F. Davison, her Husband; Ada V. Queen and Frank Queen, her Husband; Margaret E. Fowler and William S. Fowler, her Husband; Nancy R. Shoemaker, Elwood Shoemaker, Frank W. Shoemaker, and George T. Shoemaker, Defendants.

In Equity. No. 12,480.

Upon consideration of the report of John W. Bogley and Samuel H. Bogley, trustees, herein filed, showing that they have sold so much of that tract of land as lies in the District of Columbia, which was conveyed by deed of Clement Cox and others to Jesse Shoemaker, dated the 17th day of November, 1841, and recorded among the land records of the District of Columbia, in liber 1577, at folio 235, et seq., being the same land commonly known as "Friendship," or the "Jesse Shoemaker" tract, containing about twelve and one-half acres, to John T. Meany for five hundred and one dollars ($501) per acre, it is this 22d day of June, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **10th day of July, A. D. 1905**; provided a copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-3t

---

F. Walter Brandenburg, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Walter Weston**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 3d day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of June, 1905. EDWARD L. WESTON, by F. Walter Brandenburg, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,148. Administration. 25-3t

---

Weston Flint, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William B. Broun, Deceased.
No. 11,108. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on said estate, by Weston B. Flint, it is ordered this 22d day of June, A. D. 1905, that notice be and hereby is given to **Mrs. Nannie B. Sabine**, and to all others concerned, to appear in said court on **Monday, the 24th day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

---

Alex. Muncaster, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary Schnappauf**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1905. ALEXANDER MUNCASTER, 482 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,000. Administration. 25-3t

Legal Notices.

Geo. E. Fleming, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Albert T. Salter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. SARAH G. B. SALTER, 1924 I st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,997. Administration. 25-3t

---

Bendheim & Rothschild, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Michael Dietz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1905. DAVID ROTHSCHILD, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,962. Administration. 25-3t

---

Leckie, Fulton & Cox, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Hannah Barnes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. CREED M. FULTON, Fendall Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,921. Administration. 25-3t

---

S. Herbert Giesy, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Mary W. Eveleth**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1905. GUSTAVUS B. MAYNADIER, Executor, by S. Herbert Giesy, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,130. Administration. 25-3t

---

Andrew Y. Bradley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Bridget Werner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **19th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1905. MARGARET RYAN, 103 Bank st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,923. Administration. 25-3t

Digitized by Google

Legal Notices.

Lester & Price, Attorneys

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Agnes M. Beuchert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 19th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of June, 1905. JOHN A. RUPPERT, 726 9th st. N. E.; LENA BEUCHERT, 722 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,867. Administration. 25-3t

Hallam & Hallam, Solicitors

In the Supreme Court of the District of Columbia. Calvin Tibbs, Complainant, v. James Bennett's Unknown Heirs, Defendants.

Equity. No. 25,219. Doc. No. 56.

The object of this suit is to declare the title of complainant to lot two (2) in square five hundred and ninety-nine (599), in the city of Washington, District of Columbia, to be good in fee simple by adverse possession. On motion of the complainant, it is this 29th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, devisees, and alienees of James Bennett**, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. j 2-9, j 7-14, a 4-11

FOURTH INSERTION.

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Jennie R. Willoughby et al., Complainants, v. Philip H. Mires et al., Defendants. No. 25,437. Equity Docket 56.

The object of this suit is to establish the title of the complainant to original lots 11 and 12 in square 61 in the city of Washington, District of Columbia, to be good in fee simple in the complainants by adverse possession. On motion of the complainants, by Barnard & Johnson, their solicitors, it is by the court, this 14th day of June, A. D. 1905, ordered that **Philip H. Mires, Philip Meyer, George Burnes, Christian Hines, Michael Myers, Matthew Hines, and William Robertson**, or if they be dead, their unknown heirs, alienees, and devisees, and each of them, cause their appearance to be entered herein on or before the first rule day occurring forty (40) days after the first publication of this order, exclusive of Sundays and legal holidays; otherwise this cause will be proceeded with as in case of default. The court is satisfied by good cause shown by the affidavit filed herein that it is not necessary that this order should be published at least twice a month during the period of not less than three (3) months. This order shall be published once a week for four (4) successive weeks before said rule day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

Walter C. Clephane, Solicitor

In the Supeme Court of the District of Columbia. H. Rozier Dulany, Trustee, v. John W. Pilling, Alan O. Clephane, Eliza Andrews, and the Unknown Heirs, Alienees, or Devisees of Andrew Link.

No. 25,433, Equity Docket.

The object of this suit is to declare the title to the real estate hereinafter described to be good in fee simple in the complainant by adverse possession, subject to the deed of trust in the bill of complaint described, said real estate being described as follows, to wit: the north one (1) foot six (6) inches of sublot thirty (30), and all of sublots thirty-one (31), thirty-two (32), and thirty-four (34), and the north fifty-two (52) feet of sublots thirty-five (35), thirty-six (36), and thirty-seven (37), of Andrew J. Miller's subdivision of lots twenty (20) to twenty-four (24), inclusive, of F. T. Browning, trustee's, subdivision of original lots numbered nine (9), ten (10), and eleven (11), in square numbered eighty-four (84), in the city of Washington, D. C., as said Miller's subdivision appears of record in book numbered twenty (20), at page 48 of the records of the office of the surveyor of the District of Columbia. On motion of the complainant, by Walter C. Clephane, his solicitor, it is, this 12th day of June, A. D. 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Andrew Link, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order shall be published for a longer period than that herein required. This order shall be published in The Washington Law Reporter once a week for four successive weeks. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-4t

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia. Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 23 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 23 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry**, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; june 2-9; july 7-14; aug. 4-11

FIFTH INSERTION.

Filed May 10, 1905.—J. R. Young, Clerk.
John R. Shields, Solicitor

In the Supreme Court of the District of Columbia. Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 28

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JULY 14, 1905

CONTENTS.

Editorial 433
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Charles S. Bundy, appellant, v. The United States ex rel. Ehud N. Darling 434
James L. Karrick, appellant, v. Berton O. Westmore, admr., to the use of John F. McKay 435
Henry Held, trading as Brooklyn Vault Light Company, appellant, v. John T. Walker 440
Teodosia Michalowicz, appellant, v. Stanislaus Michalowicz et al 442
Legal Notices 442

Daniel W. Baker as United States Attorney.

Mr. Daniel W. Baker has been appointed by the President as United States Attorney for the District of Columbia, to succeed Mr. Morgan H. Beach, who retires from office on August 31. Mr. Baker is among the best known members of the District bar, and his appointment is received with very general satisfaction.

Mr. Baker is a native of Maryland, was born in 1867, and was educated at Mount St. Mary's College, in that State, in which institution his father was a professor. He was graduated from the Law School of the Georgetown University in 1893, and two years later become a member of its faculty, since which time his identification with the school has continued. His success at the bar was immediate, and he is numbered among our most active practitioners. For some years he has been a member of the firm of Lambert & Baker.

Mr. Baker served as assistant United States attorney for this District under Hon. Henry E. Davis for about two years, resigning to devote himself to private practice. The position to which he has been called is one of great responsibility, and demands that its occupant shall be a man of high character and a lawyer of fine ability. In both respects Mr. Baker is well equipped for its important duties, and that he will discharge them faithfully and efficiently may confidently be predicted.

False Representations to Commercial Agencies.

In Mills et al v. Brill, recently decided by the appellate division of the Supreme Court of New York, suit was brought to recover possession of merchandise sold by the plaintiffs to defendant Brill, in reliance upon statements made by him as to his financial condition for the purpose of obtaining credit. The statements in question, which were shown to have been false and fraudulent, were made by defendant to the representatives of two commercial agencies, and were relied upon by the plaintiffs, who, on the strength of them, delivered to him a quantity of gloves. A few days afterwards the plaintiffs elected to rescind the sale, and demanded the return of the gloves, which was refused, and they thereupon brought this action. It was argued on behalf of the defendant, among other things, that the false representations were not made by him to the plaintiffs directly; but this objection was summarily disposed of by the appellate division, which said: "It is true the representations made by Brill were not made to the plaintiffs personally, but that is of no importance. They were made to the commercial agencies for the purpose of obtaining through them a credit, and were just as effective for that purpose, and, if false, subjected Brill to the same liability as though made to the plaintiffs personally." The decision of the trial term in favor of defendant was reversed.

Bad Dreams as an Element of Damages.

The decision of the Court of Appeals of Kentucky in Louisville and Nashville R. Co. v. Smith, 84 S. W. 755, is interesting as dealing with a question seldom appearing in legal decisions. In that case it was held inadmissible to prove a dream alleged to have caused pain and suffering, even though the dream seems without question to have been the result of the injury and to have caused the injured person distress naturally incident to a disagreeable dream. The court also lays down the general rule that where the physical or mental suffering of a person, resulting from an injury, is the proper subject of inquiry, the usual expression of such suffering manifested or made at the time may be admitted as original evidence.

Brokers—Commissioners for Sale of Land.—An agreement by a real estate broker to share commissions with another who found a purchaser held not to preclude the broker from recovering the commissions. Bray v. Riggs (Mo.), 85 S. W. Rep. 116.

Digitized by Google

Court of Appeals of the District of Columbia.

CHARLES S. BUNDY, APPELLANT,
v.
THE UNITED STATES, EX REL. EHUD N. DARLING.

APPEALS, NOTICE OF; APPEAL BONDS; REFUSAL TO APPROVE; MANDAMUS; PRACTICE.

1. A notice of appeal from a justice of the peace gave the name of the proposed surety as "Title Guaranty and Trust Company," but omitted the words "of Scranton, Pa.," though the correct address of the proposed surety was given. The justice, on objection by the appellee, refused to approve the bond on the ground that the notice did not comply with Rule 20 of the Supreme Court, regulating notice in such cases. *Held*, that it was the duty of the justice to approve the bond, and on his refusal mandamus would lie to compel the approval of the bond.
2. Whether the Supreme Court of the District has power to make a rule which, if enforced literally, would shorten the time for giving an appeal bond, should the appellant be unable to procure the requisite surety before the commencement of the time required for notice of his intention to appeal, quære.
3. Probably, when a bond is tendered on the last day allowed by the Code, the rule as to notice would still operate, in which event, if satisfied with the surety, the justice could enter his approval as of the date of filing.
4. The relator in mandamus proceedings is, as matter of course, permitted to use the name of the United States, without resort to the intervention of the district attorney; and even that formality is not now essential to maintain the action, following Dancy v. Clark, 33 Wash. Law Rep. 18.

No. 1487. Decided May 2, 1905.

APPEAL by respondent from an order of the Supreme Court of the District of Columbia, at Law, No. 47,095, directing the issue of a writ of mandamus. Affirmed.

Mr. Wm. S. Abert and *Mr. Conway Robinson* for the appellant.

Mr. E. G. Niles and *Mr. J. S. White* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District awarding a writ of mandamus to compel the appellant, as a justice of the peace, to approve an appeal bond.

The following facts appear from the petition and return: In a case pending before the appellant, as justice of the peace, between Ehud N. Darling and William Stone Abert, the same being a trial of the right of property, the said justice, on July 28, 1904, rendered judgment in favor of Abert, from which Darling entered notice of appeal. On said day Darling served notice upon Abert that he had entered an appeal and would, on July 21, offer the Title Guaranty and Trust Company as surety upon his appeal bond. On said date Darling appeared in person before said justice, with the duly authorized agent of the Title Guaranty and Trust Company, of Scranton, Pa., and offered an appeal bond in the proper amount for his approval. Upon objection of Abert's counsel, the justice refused to approve said bond, as appears from his minutes, because of variance in notice and failure to comply with Rule 20 of the Supreme Court of the District, regulating notice in such cases. Rule 20 provides that two clear days of notice of the offering of an appeal bond from a judgment of a justice of the peace shall be given, and such notice shall contain the name and address of the proposed surety. The notice gave the name and correct address of the said surety company, but omitted the words "of Scranton, Pennsylvania." The Title Guaranty and Trust Company, of Scranton, Pa., appears of record as having been regularly admitted and approved as sufficient surety upon appeal bonds in the courts of the District, and there is no company of similar name upon the said record. It seems quite clear that before the objection was sustained, both the objecting party and the justice of the peace were well informed that the notice referred to the Title Guaranty and Trust Company, of Scranton, Pa., and to none other.

We are of the opinion that it was the plain duty of the justice of the peace, under the circumstances, to approve the bond that had been tendered. Beal v. Cox, 14 App. D. C. 368, 373: 27 Wash. Law Rep. 231. In that case it was said: "If the bond appear to be regular in form and execution and the surety sufficient, it is his duty to approve it without regard to captious objections that may be raised on behalf of an opposing party." This being the case, it was clearly within the power and became the duty of the Supreme Court of the District in the exercise of its appellate jurisdiction in the premises to compel the approval of the bond. Church v. Fidelity and Deposit Co., 13 App. D. C. 264, 266: 26 Wash. Law Rep. 676.

The bond was tendered within the six days prescribed by section 31 of the Code, and it is not necessary, therefore, to consider whether, in cases of the trial of the right of property in a justice's court, this time is extended to six days after prayer for appeal entered, by the terms of section 35.

Nor, as the notice was given in the time prescribed by Rule 20, is it necessary to determine whether the Supreme Court of the District has the authority to make a rule which, if enforced literally, might shorten the time for giving an appeal bond should the appellant be unable to procure the requisite surety before the commencement of the time required for notice of his intention. Probably when a bond shall be tendered on the last day allowed by the Code, the rule as to notice might still operate; in which event, if satisfied with the surety, the justice could enter his approval as of the date of filing as indicated in Beal v. Cox, 14 App. D. C. 368, 374: 27 Wash. Law Rep. 231.

The question of the power of the court to make a rule that in its necessary operation might shorten the statutory period for tendering appeal bonds in the courts of justices of the peace will not be determined until a case shall come before us which renders it necessary.

The objection that the petition for mandamus could only be prosecuted by the United States attorney for the District has been presented, for the first time, on this hearing. Even if not too late to be now entertained, it is without merit. It has always been the practice to permit the relator in such proceedings to use the name of the United States, as a matter of course, without resort to the intervention of the district attorney; and even that formality is not now considered essential to the maintenance of the action. Dancy v. Clark, 33 W. L. R. 18.

There was no error in granting the writ of mandamus, and the order will be affirmed with costs. It is so ordered. Affirmed.

Digitized by Google

Court of Appeals of the District of Columbia.

JAMES L. KARRICK, APPELLANT,

v.

BERTON O. WETMORE, ADMR., TO THE USE OF JOHN F. McKAY.

JUDGMENTS; ORDER STRIKING OUT DISMISSAL OF CAUSE WITHOUT NOTICE TO DEFENDANT HELD VOID.

1. A judgment of dismissal, on its face apparently a final disposition of the cause in which rendered, can not, after the lapse of five terms of the court rendering it, be stricken out without notice to defendant, and a judgment rendered in place of it in favor of plaintiff and for the full amount of his claim.
2. A judgment of dismissal is as good as any other judgment as long as it stands, and parties are entitled to act upon the faith of it as a valid judgment, while, not being rendered on the merits, they are liable to be stricken out, yet they are final judgments, and may not, any more than a judgment upon the merits, be disturbed after the lapse of the term at which rendered.
3. To an action brought here on a Massachusetts judgment, the defendant pleaded the invalidity of the judgment. It appeared that the Massachusetts court had, on June 12, 1899, dismissed the cause on the ground that no action had been taken within one year, and the cause stood dismissed for more than five terms of the court, until October 18, 1900, when the order of dismissal was, without notice to defendant and without his knowledge, stricken out as based upon a mistake of fact, action having been taken within the year, and on November 20, 1900, likewise without notice to defendant, judgment was rendered for plaintiff for the full amount of his claim. In the meantime, on April 28, 1899, defendant filed his petition in bankruptcy in Colorado, and on June 28, 1899, received his discharge from all provable debts, including that due plaintiff. Subsequently to his discharge, and while the Massachusetts suit stood dismissed, he inquired of the clerk of that court as to the condition of the suit, and was informed it was no longer pending, for which reason he did not suggest his discharge in bankruptcy therein. Defendant's plea, in the action here on the judgment, setting up these facts, was demurred to, and the demurrer sustained. On appeal by defendant, *held* that the action of the Massachusetts court in striking out the judgment of dismissal and in rendering judgment for the plaintiff, without notice to defendant, was without jurisdiction, and was null and void; and the trial court erred in sustaining the demurrer to the plea.

No. 1528. Decided April 17, 1905.

APPEAL (specially allowed) by defendant from an order of the Supreme Court of the District of Columbia, at Law, No. 46,600, sustaining a demurrer to a plea. Reversed.

Mr. J. J. Darlington, *Mr. W. W. Millan*, and *Mr. R. E. L. Smith* for the appellant.

Mr. Wm. L. Ford for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

A suit between the parties to the controversy now before us was here on a former appeal and seems to have involved the same subject-matter. It was held, in substance, that the suit, as it then stood, could not be maintained. 22 D. C. App. 487: 31 Wash. Law Rep. 714. That suit seems to have been thereupon abandoned, and the present proceedings were instituted wherein very different questions are raised.

The suit is one at common law, instituted in the Supreme Court of the District of Columbia, upon a judgment recovered by the appellee as plaintiff against the appellant as defendant in the Superior Court for the county of Suffolk, in the State of Massachusetts, on November 20, 1900, for the sum of $12,881.46, besides costs, which is alleged in the declaration to remain unsatisfied. With the declaration was filed a copy of the record of the court in Massachusetts, and as the validity of this record as a basis for the present suit is here in question, it is necessary that its condition should to some extent be stated.

The suit in Massachusetts, which seems to have grown out of some building contracts between the appellant and Charles H. Wetmore, deceased, the intestate of the plaintiff therein, was commenced in the year 1892 by attachment proceedings. The defendant, however, the present appellant, subsequently appeared by attorney and pleaded to the declaration. Among the pleas was one of set-off. There was then a trial by jury, who were directed to return a special verdict upon four special interrogatories framed for them. The answers of the jury to these interrogatories seem to have been unfavorable to the defendant in the cause. And yet the defendant came in and moved for judgment. The record fails to disclose what action, if any, was taken on this motion. But the next step seems to have been a motion by the defendant to set aside the special verdict, which was allowed. Thereupon the plaintiff appears to have amended his declaration by filing an additional count, and the parties went to trial again before a jury. There was another special verdict, and also a general verdict in favor of the plaintiff in the case for the sum of $9,169.39.

A motion for a new trial was made and overruled, and then the defendant, according to the record, filed "sundry exceptions to the ruling and opinion of the court in certain matters of law, which were reduced to writing." When these exceptions were filed does not appear; but presumably they were filed on or before March 5, 1894, which was the time assigned within which they were to be filed.

Nothing further seems to have been done for upwards of four years. Then, on June 8, 1897, "at a calling of the docket under the general order of court the action was dismissed." Two days afterwards, on June 10, 1897, the order of dismissal was stricken out and the cause restored to the calendar. A very short time after this, on June 28, 1897, the attorney for the defendant entered an order withdrawing his appearance. There would seem to have been a substitution of attorneys, for the next step that appears in the record is on June 13, 1898, when another attorney, whose name appears nowhere else in the record, also withdrew his appearance for the defendant. Immediately thereafter appears the following entry:

"Thence the case was continued to the July sitting, 1898, when said exceptions, having been presented to the court, were disallowed as not conformable to the truth, the bill not properly and correctly stating the evidence so as to fairly present the questions of law raised by the defendant's exceptions.

"Thence the case was continued from sitting to sitting into the April sitting, 1899, when on the 12th day of June, 1899, at a calling of the docket under the general order of court, said action was dismissed.

"And now at this present October sitting, 1900, to wit, on the 18th day of said October,

Digitized by Google

1900, said dismissal is stricken off and the case brought forward, the same having been dismissed improvidently, action having been taken within one year, but not discovered."

Then, on November 17, 1900, there was a motion by the plaintiff for the entry of judgment on the verdict of the jury; and judgment was accordingly entered on November 20, 1900, against the defendant for the sum of $12,881.46 and costs of suit, with award of execution.

It is upon this record that the present proceedings were instituted in this District.

The defendant filed two pleas: (1) The general issue of nul tiel record; and (2) a special plea, wherein he set forth that, on June 12, 1899, the cause against him in Massachusetts was dismissed; that, under the rules of the court, that dismissal became final on the first Monday of July, 1899; that the cause remained so dismissed for more than five terms of the court, until October 18, 1900; that in the meantime, on April 29, 1899, the defendant filed his petition in bankruptcy in the District Court of the United States for the District of Colorado, in which in his schedule he enumerated the debt due to said Charles H. Wetmore, and was by the said district court, on June 23, 1899, discharged from all debts provable against him in bankruptcy, wherein was included the debt here sued on; that subsequently to his discharge in bankruptcy, and while the suit in Massachusetts stood dismissed as aforesaid, he made inquiry of the clerk of that court as to the condition of the suit and was informed that the same was no longer pending; that, relying upon this statement, he took no steps in that court to suggest his discharge in bankruptcy; that the action in Massachusetts was sought to be restored to the docket of the court in that State, "*without summons, citation, or notice* of any kind to the defendant, or to any one for him, and without his knowledge;" and that the court had no jurisdiction in the premises to render such judgment.

There was joinder of issue by the plaintiff on the defendant's first plea, and a demurrer to the second; and the demurrer was sustained by the court below. From the order sustaining the demurrer the defendant has been allowed a special appeal to this court; and the cause is now before us on this special appeal.

The question in this case is whether a judgment of dismissal, on its face apparently a final disposition of the cause in which it was rendered, can, after the lapse of five terms of the court by which it was rendered, be stricken out without notice to the defendant, and a judgment rendered in the place of it, equally without notice to the defendant, in favor of the plaintiff and for the full amount of the latter's claim. And this question, we think, on the plainest principles of justice, whatever may have been the merit of the plaintiff's claim, must be resolved in the negative.

The right to be heard is a fundamental right of every litigant under our system of jurisprudence, and under every system of jurisprudence worthy of the name; and usually it is not denied even in the lawless codes of the most lawless savages; and in the right to be heard the first element is that of notice. The service of process, in other words, notice, is the essential prerequisite to the exercise of jurisdiction by any court. Indeed, it may be said that, strictly speaking, not a single step from the beginning to the end of a legal controversy can be taken without notice to the opposing party; although, of necessity, the notice in many instances is constructive, rather than actual, and the absence of it is an irregularity rather than a defect that would operate to cause a failure of jurisdiction. These are fundamental principles of the law which can not reasonably be controverted; and yet, if we give effect to the contentions of the appellee in the case now before us, it can not be without serious derogation of those principles.

As appears from the record of the court of Massachusetts the appellant here was the defendant in a suit in that court. That suit, after many vicissitudes, resulted in a judgment of dismissal, upon the ground that there had been no prosecution of the cause for twelve months previously thereto, which was a good ground for dismissal under the rules and practice of the court. There would appear, however, to have been some mistake in the matter, and that there had been some action within the previous year. This was on June 12, 1899. Before this order of dismissal, and while the suit was in a state of abeyance, the appellant had instituted proceedings in bankruptcy in the District Court of the United States for the District of Colorado (on April 26, 1899), for the purpose of being discharged from his debts under the bankruptcy laws of the United States, and had in his schedule of indebtedness enumerated the claim for the enforcement of which the suit in Massachusetts had been prosecuted. On June 23, 1899, he received his discharge in bankruptcy. This was seventeen days after the dismissal of the suit in Massachusetts, of which he seems to have had no notice. But immediately after his discharge, with the view of pleading such discharge as a bar to further proceedings in the Massachusetts court, he applied to the clerk of that court to ascertain the condition of the suit there, and was informed, and very truly informed, that there was no suit then pending in that court against him, and that the suit which had been pending against him had been dismissed.

Now, whatever may have been the cause of the dismissal of that suit, whether it was due to a mistake of fact or to a mistake of law, or whatever was the reason for it, as long as it was not done by the fraud of the appellant, which is not pretended, the appellant, under the circumstances, had the right to rely upon it and to rest secure upon its validity. If the dismissal was improper it was not for him to take any steps to correct the impropriety. There was no obligation upon him to move to have the dismissal stricken out, even to give him an opportunity to plead his discharge in bankruptcy. He was entitled to rest upon the record as he found it and to assume that the cause was at an end. And even if he was chargeable with a knowledge of the infirmity of the judgment of dismissal as having been based upon a mistake of fact, he was entitled to assume that he would be duly notified of any attempt to correct the error. It would certainly be most unreasonable to hold that he was bound

Digitized by Google

to incessant vigilance to see that no step was taken in the matter without his cognizance of the fact. And when it is remembered that, whatever may have been the merit of the original claim against him, and whatever may have been the demerit of his original defense, he had by his discharge in bankruptcy become entitled to a prima facie perfect defense which would or at least might have precluded the entry of any judgment against him, as would a plea of payment puis darein continuance, if supported by proof, it will be apparent what great injustice could be and was done in this cause by the failure of notice to him of an attempt to convert a judgment in his favor to a judgment against him.

It seems to be conceded that, under the circumstances, only in the suit in Massachusetts could the discharge in bankruptcy have been properly pleaded. It can not be pleaded in the proceedings in this District, for the reason that what purports to be the final judgment of the court in Massachusetts, upon which the present proceedings are based, was rendered after the discharge in bankruptcy. Dimock v. Revere Copper Company, 117 U. S. 559. But the appellant proposed to plead it, where it was properly pleadable, in the original suit in Massachusetts; and it may be assumed that he would have done so, if the opportunity to do so had been afforded to him by proper notice that the judgment of dismissal would be stricken out. It seems to be assumed by the appellee that the appellant had lost his right to plead his discharge in bankruptcy by his failure, upon the filing of his petition in bankruptcy, to ask for a stay of proceedings in the Massachusetts court. But this proposition is wholly untenable. It was his privilege to ask for a stay of proceedings, if he so desired; but if he assumed that no judgment would be rendered in that court before his discharge in bankruptcy, and that he would have ample time before the final judgment therein to introdnce into the suit the defense of his discharge, he was at perfect liberty to do so. In fact, the proceedings in the Massachusetts court seem to have been stayed during nearly the whole time of the proceedings in bankruptcy and for about two years previously thereto; for the record fails to show that anything whatever was done in the cause in the Massachusetts court between June 10, 1897, when a previous judgment of dismissal was stricken out, and June 12, 1899, when the second judgment of dismissal was entered, except the withdrawal of the defendant's attorneys and the disallowance of the defendant's exceptions at the July term of 1898. Moreover, the only action taken by the court in Massachusetts during the pendency of the bankruptcy proceedings, that is, between April 26, 1899, and June 23, 1899, was the very dismissal complained of by the appellee, on June 12, 1899, which was a most effectual stay of proceedings.

It is plainly apparent, therefore, from the record before us that the appellant was entitled at any time after June 23, 1899, to go into the court in Massachusetts and there plead his discharge in bankruptcy as a bar to any recovery there against him, if any suit was then pending; that there was no suit then pending in that court; that, when it was sought to revive that suit by striking out the judgment of dismissal, it would have been competent for him then to plead his discharge, if he had the opportunity; that he was deprived of that opportunity by the failure to give him notice, and that thereby he lost a most valuable right. No case can well be supposed which more forcibly illustrates the propriety of giving notice or the gross injustice that may follow from failure to give it. Assuredly it can not be that the law will sanction such a proceeding.

We need not decide the question whether the court in Massachusetts had the authority, after the lapse of five terms of that court, to strike out a judgment of dismissal and to enter a final judgment in favor of the plaintiff. We will assume that it had full power and authority so to do under its rules of practice and under the laws of that State. The full force and credit required by our Federal Constitution and the comity that exists between the States to be given by the courts of one State to the judgments and decrees of the courts of other States, we are disposed to accord even to a greater extent than we might do to the courts of our own jurisdiction, for the reason that many concessions are to be made to difference of practice and difference of statutory law; but in no court of any jurisdiction can we recognize the authority to render judgment against individual citizens without due notice to them, and it is conceded that in the present instance there was no notice of any kind to the appellant or to any one for him of the intended action of the court. It is alleged in the appellant's plea, and it is admitted by the demurrer, that there was absolutely no notice of any kind to the appellant.

In order to maintain the validity of the judgment upon which he sues, the appellee is driven to the necessity of arguing that no notice was required, that the parties were in court, and that the court had jurisdiction over them and over the subject-matter. But the plain answer to this is that the defendant was not in court. He had been dismissed from court without day and was no longer required to take notice of its proceedings. It is absurd to argue that he must be regarded as cognizant of the mistake under which the judgment of dismissal was rendered; that he must be held to know that such judgment was liable to be stricken out; and that, therefore, he was constructively retained in court for an indefinite time, and until the plaintiff thought proper to move in the matter and have the judgment stricken out. This contention, if sustained, would render judgments of dismissal useless and of no value; and yet undoubtedly a judgment of dismissal is as good as any other judgment as long as it stands, and parties are entitled to act upon the faith of it as a valid judgment. It is true that judgments of dismissal, not being rendered upon the merits, are liable to be stricken out; and yet they are final judgments and may terminate the litigation as well as any other judgment. It may not be disturbed any more than a judgment upon the merits after the lapse of the term at which it was rendered. Bronson v. Schulten, 104 U. S. 410; Phillips v. Negley, 117 U. S. 665.

In these two cases it is shown that there are certain exceptions to the general rule, which

Digitized by Google

may be reduced to three classes: (1) Cases of clerical misprision, as when the judgment rendered was not entered correctly by the clerk; (2) cases of mistakes of fact, such as that one of the parties to the judgment had died before its rendition, or was an infant, or a feme covert, or the like, which errors were formerly corrected at the common law by writ of error coram nobis; (3) cases in which a bill in equity will lie to prevent the execution of an erroneous or inequitable judgment.

Now here there was no clerical misprision. The judgment entered was the judgment actually rendered and which was intended to be rendered. It is true there was a mistake of fact, as we may assume, but that does not make the judgment a clerical error, but an erroneous judgment, such as might result from a mistaken understanding of testimony. It falls, if at all, within one of the other two classes. But this does not help the case of the appellee. For, while in modern practice, the writ of error coram nobis has fallen into disuse, and relief is afforded upon motion supported by affidavits, and while under statutory provisions, as in Massachusetts, relief by motion is also to a limited extent substituted for bill in equity, yet, as both the writ of error coram nobis and bill in equity can not be entertained without service of process, so a motion to serve the same purpose must likewise be based upon notice. Notice is as requisite to jurisdiction in the one case as in the other, and the fact that the method of relief is more summary does not in any manner diminish the necessity for its requirement.

Certain cases are cited on behalf of the appellee as tending to support his proposition that a court may, without notice to the party to be affected thereby, set aside a judgment after the term at which it was rendered and enter a new and radically different judgment. These are Walden v. Craig's Heirs, 14 Pet. 147; Odell v. Reynolds, 70 Fed. Rep. 656; Emery v. Whitwell, 6 Mich. 474; Nowe v. Todd, 83 Mo. 601; Mann v. Schroerr, 50 Mo. 306; Davis v. Wade, 58 Mo. App. 641; Emery v. Berry, 28 N. H. 473; Block on Judgments, sec. 134; Freeman on Judgments, sec. 142; 17 Amer. and English Encyclopædia of Law (2d ed.), 823. But upon careful examination of these authorities it will be found that in no one of them was the case presented which is now before us, and that the mistakes corrected were mistakes of a clerical nature, apparent on the record.

The case of Walden v. Craig's Heirs, 14 Pet. 147, merely held that parties were, under the law of the State of Kentucky, to be regarded as continuing in court for the purpose of carrying a judgment into effect. But this is a very different proposition from that of wholly invalidating a judgment and converting it into an adverse decision.

The case of Odell v. Reynolds is apparently more to the point, but only apparently so. A very brief statement of it will be amply sufficient, notwithstanding the somewhat broad language of the opinion, to show that it is no authority whatever for the proposition advanced on behalf of the appellee in the present case.

In that case a judgment by confession had been entered in the Superior Court of Cook County, in the State of Illinois, for the sum of $25,000, on account of several promissory notes held by the plaintiff and aggregating that amount. The entry of the judgment was on April 18, 1892, and the confession purported to be by a certain person named as "the attorney in fact" for the defendant, and to be an account of "the note filed in the case." There were two defects in the judgment. One was to the effect that the statute law of Illinois forbade the appearance of any one as an attorney in fact to confess judgment, unless he was an attorney at law. The person who had confessed the judgment was in fact an attorney at law; but that fact did not appear affirmatively upon the record, although it was ascertainable from the rolls of the court. Another defect was that the word "note" was used in the singular number, indicating that only one note for the sum of $25,000 had been filed, while in fact several notes had been filed of the aggregate amount of $25,000. On February 26, 1893, after the term had expired at which the judgment had been rendered, motion was made to correct it. Whether this motion was made upon notice or without it, the statement of the case does not show. From the opinion in the case of Odell v. Reynolds it may be conjectured that it was without notice. The motion was allowed, and the judgment was corrected. Subsequently suit was instituted upon it in the Federal District Court; and there were pleas filed by the defendant, one of them setting forth the insanity of the defendant at the time the judgment was rendered, another to the effect that the judgment had been altered without authority on the part of the court of Cook County so to do, after the lapse of the term. This suit found its way to the Circuit Court of Appeals for the Sixth Circuit, and that court sustained the authority of the Cook County court to correct its judgment.

Assuredly there is nothing in the facts of this case that would justify the contention of the appellee in the case now before us. In that case there was no substantial change whatever in the new judgment that was entered. Indeed, from our standpoint the changes might be regarded as wholly superfluous. The original judgment was against the defendant for $25,000; the corrected judgment was one against the defendant for $25,000. It was of no real consequence whether the claim was upon one note for $25,000 or upon several notes aggregating that sum, or whether it appeared upon the record that the attorney in fact was an attorney at law; and we fail to see how, upon the authority of such a case as this, the action can be vindicated which would convert, without notice to the party to be affected thereby, a judgment of dismissal in his favor to a judgment against him for upwards of $12,000.

It is upon the reasoning of the case, however, and not upon the facts of it, that the appellee seeks to justify himself; but no more upon the reasoning than upon the facts can he support his contention, for the opinion of the court distinctly and explicitly states the limitations upon the course of procedure which it sanctioned, and which no doubt is entirely correct within these limitations. As the case of Odell v. Reynolds is the only case that has been cited

Digitized by Google

which treats this subject at any length from the apparent standpoint of the appellee, and the subject is a grave one in the administration of justice, we are at pains to transcribe so much of the opinion in that case as seems to be pertinent to the issue before us. The court there said:

"The first question to which we shall give attention arises upon the objection of the defendant to the entry made by the Superior Court of Cook County, on the 26th day of February, 1893, in correction and amendment of the judgment which it had entered on the 18th day of April, 1892. The grounds of that objection, as stated by counsel for defendant in error in argument, are: (1) That the court had no power to make the order, for the reason that the term at which the judgment was rendered had expired, and (2) that the order was made without any notice to the defendant of the proposed action and without his knowledge. . . . On the contrary, it is a power inherent in the authority of every court having general jurisdiction to correct errors in the making up of its records whereby they fail to express the truth in regard to its proceedings. And the power may be exercised by the court at any time when the error is brought to its attention, *and no injury is likely to happen to the parties or other persons by its exercise.* No doubt such power should be cautiously and discreetly used, but that it exists is well established by authority. It is the settled doctrine of the English courts, and in most of the courts of this country. . . . In the present case counsel for defendant submits as a vital objection to the action of the Illinois court in making the entry for correction of February 26, 1893, that 'to make that finding and to insert it in the judgment nunc pro tunc was to materially add to and substantially modify the judgment that was rendered at the prior term, for it involved the very character and scope of the agency to which alone Reynolds had committed the right to enter his appearance and confess judgment.' But the consequence of the correction is no test of the power of the court to make it. In Wight's case, just cited, the effect of the entry was to annihilate the whole foundation on which his petition rested. . . . Sometimes the propriety of such action exists in cases where the correction may be made upon that which appears in the record itself and is necessary to make it consistent and harmonious one part with another. In other cases it is necessary in the interest of justice to act upon matters not appearing from the record; for example, things resting in the recollection of the judge, or evidence adduced aliunde. In the former case notice to parties is not necessary. No new thing is brought upon the record. The court, for the clearer and more accurate expression of its final action, molds into form that which is fairly and reasonably deducible from the whole record, taken together. There is nothing to litigate. *No right is substantially affected.* Freeman on Judgments, sec. 72a; 1 Black on Judgments, sec. 164; Emery v. Whitwell, ubi supra; Mathesen's Adm. v. Grant, 2 How. 263. In the latter case the question of the necessity of notice may depend upon the source from which the evidence comes upon which the action is to be taken. If it is the recollection of the court, it is doubtful whether notice is required, for the reason that it is not open to contest. At all events, it would seem upon the authorities that corrections of the record made by the court upon its own recollection would not be collaterally assailable, though made without notice."

We have underlined certain phrases in this opinion which clearly show the limitation within which it was intended to be restricted. The opinion is plainly unexceptionable as applied to the facts of the case which was before the court; but it is equally plain that the ruling of the court was not intended to extend to cases, *where any right was to be substantially affected, or where any of the parties were likely to be injured by the proposed correction.* Now it is difficult to conceive of any case where a right was more substantially affected, or where one of the parties to the cause was more seriously injured, than the case now before us.

The case of Wight, 134 U. S. 136, is also cited by the appellee as sustaining his contention that he was entitled to proceed without notice. But we fail to see wherein that case supports him. There it appeared that one Wight, who petitioned to be released on habeas corpus, had been indicted and convicted in a district court of the United States for a criminal offense. He made a motion for a new trial and in arrest of judgment, and at that point the district court certified the cause to the circuit court. The circuit court overruled both motions, but failed to enter any order to remand the cause to the district court. It is not entirely clear from the record whether the failure to enter such an order was due to oversight on the part of the clerk to note on his record the verbal order that may have been actually rendered, or resulted from the failure of the court at the time to make any order. But on the same day on which the circuit court denied the motions of the defendant, the district court again took up the case, entered an order overruling the same motions, and putting upon record its opinion that the case had been improvidently and without authority certified to the circuit court, vacated the order of certification, and thereupon proceeded to pronounce sentence upon the defendant. The writ of habeas corpus was then sued out, and while that writ was pending it was discovered that, as already stated, no entry had been made remanding the cause from the circuit to the district court. Thereupon the circuit court corrected its record so as to provide for such an entry. The petitioner's whole case was based upon the absence of any such entry, and the consequent absence, as claimed, of jurisdiction on the part of the district court to proceed with the cause. The Supreme Court of the United States held that the correction of the record was lawful.

Now, it is quite apparent from the statement of this case, in which the district judge, who held the district court, also sat with the circuit judge in the circuit court, and both courts were held at the same time in the same court house, that there was an *actual* remanding of the cause by the circuit to the district court; and whether the failure to enter a formal order to that effect was due to misprision of the

Digitized by Google

clerk, who no doubt was the same for both courts, or, as is more likely from the circumstances, was the result of oversight on the part of the judges, or of the view evidently entertained by them, although not entertained, it would seem, by the Supreme Court of the United States, that the order of certification from the district to the circuit court was without authority of law and void; the failure to enter an order for remanding the cause was not a jurisdictional, but a clerical matter. It was intended simply to make a record of that which was actually done by the court, and it did not at all materially alter the nature of the judgment that was rendered. The case of Wight, therefore, is no authority for the position of the appellee in the case now before us.

Various other cases that are of a similar character, in which there has been a relaxation of the rigid rules of the common law that judgments of a court of general jurisdiction may not be altered in any manner after the lapse of the term at which they were rendered. But it is unnecessary to consider them. The relaxation has been only to correct clerical errors, or to fill up a gap in the record when there was actually no gap in the action of the court, or in some way to make the record consistent with itself. In other words, the power of correction remaining in the court would seem to be rather of matters leading up to judgment itself. But assuming that a judgment itself might be altered in a substantial manner, by way of correction or amendment, after the lapse of the term at which it has been rendered, we find no adjudicated case, and we know of no rule of law or of reason that would justify a substantial alteration of such judgment without notice to the person to be affected thereby. Such notice is jurisdictional, and the failure to give it is not a mere irregularity to be corrected by action in the same court in the case itself, or by appeal to an appellate tribunal. Evidently in the case before us, when the defendant was advised of the action taken against him, it was too late for him to enforce his right by application to that court or by appeal, and it is absurd that he should be driven to such mode of enforcing his right. He had been dismissed from court, and he could not have been called back except by notice, which it is conceded was not given.

From what we have said it follows in our opinion that the action of the Superior Court of Suffolk County, in the State of Massachusetts, in striking out the judgment of June 12, 1899, dismissing the suit between the parties to these proceedings, and rendering on November 20, 1900, in its place and stead a new and radically different judgment for the plaintiff and against the defendant for the sum of $12,881.46, without notice to the defendant, was without jurisdiction and was null and void. Consequently we think that it was error in the trial court to sustain the demurrer of the plaintiff to the appellant's second plea, and that the demurrer should have been overruled.

The order appealed from will be reversed, with costs; and the cause will be remanded to the Supreme Court of the District of Columbia, with directions to vacate such order, and to enter an order overruling the plaintiff's demurrer, with leave to the plaintiff to plead over as he may be advised upon such terms as to the court may seem proper; and for such further proceedings therein, if any, as may be right and just and according to law, and not inconsistent with this opinion. And it is so ordered. Reversed.

HENRY HELD, TRADING AS BROOKLYN VAULT LIGHT COMPANY, APPELLANT, v. JOHN T. WALKER.

AGENCY; PAYMENT OF MONEY TO AGENT; EVIDENCE.

In this case the question was, whether defendant was justified in making payment to an agent who failed to turn over the money to his principal, the plaintiff. It appeared the plaintiff appointed the person collecting the money to the conduct of an apparently general office, supplied him with stationery upon which his name appeared as agent, and placed in his hands for presentation to defendant the bill of which he received the payment. *Held* not conclusive evidence of a general agency justifying the payment of money to the person holding such agency, but to raise a question for the jury; and the trial court erred in directing a verdict for defendant.

No. 1507. Decided May 2, 1905.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,237, entered upon a verdict directed by the court in a case appealed from a justice of the peace. Reversed.

Mr. Andrew Wilson and *Mr. Noel W. Barksdale* for the appellant.

Mr. Arthur Peter for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This cause originated before a justice of the peace, by whom judgment was rendered in favor of the appellant, who was the plaintiff before him. Upon appeal by the defendant to the Supreme Court of the District, and a new trial had therein before the court with a jury, the court directed a verdict in favor of the defendant, and judgment was entered thereon, from which the plaintiff has appealed to this court.

The question in the case is whether the defendant was justified in making payment to an agent, who, it seems, failed to turn over the money to his principal. For there is no question as to the actual payment of the money by the appellee. The only question is whether he paid it to the right person; and that is resolved into the inquiry whether a man, who was confessedly an agent for soliciting bids and making contracts, was also an agent for the receipt of money becoming due on those contracts.

The circumstances of the controversy between the parties are these. The plaintiff was a manufacturer of vault lights in Brooklyn, New York, doing business under the name of a company, the "Brooklyn Vault Light Company." He had an office also in Philadelphia, whose business, however, does not seem to have been confined to Philadelphia, and in which he placed one W. E. Taylor as his agent. To him he furnished stationery, with printed letter heads and bill heads, used by Taylor in all his transactions in this case, and the printing was in these words: "Philadelphia Office, 604 Witherspoon Building, W. E. Taylor, agent." And there was no

Digitized by Google

restriction or qualification of the word "agent." Walker, a resident of Washington, had a building in this city in course of construction, for which he desired to procure some vault lights. Under date of August 26, 1902, Taylor, upon paper such as has been mentioned, addressed a letter to him (Walker), offering to furnish the lights to him for $150. The letter was in duplicate. Under date of September 3, 1902, Walker accepted the proposal, indorsed his acceptance on one of the duplicates, and returned it to Taylor. Taylor sent it to his principal, the plaintiff, in Brooklyn; and the latter, on October 2, 1902, shipped the material from Brooklyn directly to Walker, in Washington, together with the bill therefor. There was some freight to be paid and some slight amount of work to be done by the shipper, but this Walker was authorized to do, and the cost of it to deduct from the amount of the bill. In regard to these items of deduction there is no controversy between the parties.

On December 3, 1902, Taylor called in person upon Walker, with a bill, dated November 1, 1902, whose heading was in print purporting to be from the plaintiff's Brooklyn office, but which otherwise was in the plaintiff's handwriting, and requested payment of the amount ($150). Walker requested to have the credits or deductions, amounting to $12.31, entered on the account; and these Taylor entered; and Walker thereupon paid the balance ($137.69) to Taylor, and the latter receipted the bill, and returned it thus receipted to Walker.

It appears that Taylor made no report of his collection to his principal; and the latter, under date of January 1, 1903, sent Walker another bill. Upon this bill Walker wrote: "Paid Dec. 3, 1902, to your agent W. E. Taylor in person," and he returned the bill with the indorsement to the plaintiff. The result was the institution of the present suit.

The plaintiff and the defendant both testified in the case, the former by deposition taken in New York, and their testimony is the only testimony in the case, exclusive of the documentary evidence which has been indicated. The plaintiff swore, in substance, that Taylor had no authority to collect money for him, but only to solicit orders. The defendant testified that, at the time of his first interview with Taylor, when he saw the word "agent" on the letter head, he asked Taylor about the matter, and Taylor stated that he had authority to collect money for goods sold on account of the Brooklyn Vault Light Company; but that he had taken no other steps to ascertain whether Taylor had any such authority to receive payment of this account.

If this case had been tried by the court without a jury, as is often done in appeals from justices of the peace, we would have unhesitatingly affirmed the decision. For we think that there was enough testimony to justify a jury, or a court sitting to try an issue of fact without a jury, to find that the plaintiff had held out Taylor as his general agent, authorized to receive and collect money, as well as to solicit orders; and that the defendant paid such agent in good faith. But the question which is before us, and which was before the court below, is not whether the testimony preponderated in favor of the defendant rather than in favor of the plaintiff, or whether there was a sufficiency of testimony on which to found a verdict for the defendant, but whether there was any conflict of testimony, or whether the testimony was so overwhelmingly in favor of the defendant that the court would not allow an adverse verdict to stand. We find that there was conflict of testimony which should have been submitted to the jury.

Perhaps no great importance should be attached under the circumstances, either to the plaintiff's statement that no authority had been given by him to Taylor to collect money, or to the defendant's statement that Taylor had assured him that he was so authorized, although these several statements raise an issue of fact. But the unquestionable facts, upon which it is sought to base the claim of authority, the show of agency upon the stationery furnished by the plaintiff to Taylor, the placing of the bill of November 1, 1902, by the plaintiff in Taylor's hands for presentation to the defendant, and the appointment of Taylor to the conduct of an apparently general office, are all circumstances which should have been submitted to a jury. They are not conclusive evidence of a general agency which would justify the payment of money to the person holding such agency. They are merely circumstances from which a jury might justly infer the existence of an agency of that character. They raise a question of fact for a jury, and not merely a question of law for the court. Hishfield v. Waldron, 54 Mich. 649; Luckie v. Johnston, 89 Ga. 321; Story on Agency, sec. 249. While perhaps the majority of men might have done what Walker did in this case, yet it can not be said, as a conclusion of law, that prudent men would not have differed in the conclusions to be drawn from the circumstances stated.

We think the case should have been submitted to a jury, and that it was error to withdraw it from their consideration. For this error we are constrained to reverse the judgment, with costs, and, to remand the cause to the Supreme Court of the District, with directions to award a new trial. And it is so ordered.

Reversed.

Master and Servant—Defective Appliances.—Where an appliance erected for the work was not sufficiently strong, owing to defects in one of the main supports, and an employee was injured, the master was liable. Ingham v. John B. Honor Co. (La.), 37 So. Rep. 963.

Master and Servant—Minority of Injured Brakeman —Where a brakeman was employed on his sworn application that he was 21 years old, his minority is no factor in an action for personal injuries. Williams v. Illinois Cent. R. Co. (La.), 37 So. Rep. 992.

Landlord and Tenant—Rent Not Due at Commencement of Action.—Plaintiff in forcibel entry and detainer held not entitled to recover rent not due when the complaint was filed. State v. Pittenger (Wash.), 79 Pac. Rec. 942.

Digitized by Google

Court of Appeals of the District of Columbia.

TEODOSIA MICHALOWICZ, APPELLANT,

v.

STANISLAUS MICHALOWICZ ET AL.

DIVORCE; CONFESSIONS; EVIDENCE.

1. To warrant a decree of divorce based on alleged confessions of defendant, the confessions must be well established, direct and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances.
2. The evidence in this case held to fall short of these requirements.

No. 1516. Decided May 2, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,298, dismissing a bill for divorce. Affirmed.

Mr. Julius I. Peyser for the appellant.

Mr. Jos. D. Sullivan for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Appellant, a resident for three years past of the District, filed the bill in this case for a divorce from her husband on the ground of adultery. Defendant was alleged to be a resident of Chicago, and notice was given by publication. No appearance having been made by him, an attorney was assigned to defend the cause, as required by the statute.

Upon the hearing the bill was dismissed, and plaintiff has appealed.

Without reviewing the evidence, which is of a character that ought not to be spread of record, it is enough to say that the court was right in holding it insufficient to sustain the allegations of the bill. It consisted almost entirely of alleged confessions of the defendant.

The Code provides that no decree of divorce shall be rendered on default, without proof; "nor shall any admision contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall in all cases be proved by other evidence." Sec. 964.

The Code declares what we apprehend was the general rule of practice in such cases and was not intended to prohibit all evidence of confessions that may have been made by a party. Baker v. Baker, 13 Cal. 88.

But to warrant a decree of divorce the confessions must be well established, direct and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances. Robbins v. Robbins, 100 Mass. 150; Johns v. Johns, 29 Ga. 718; Kloman v. Kloman, 62 N. J. Eq. 153.

The evidence in this case falls short of these requirements. It lacks directness and certainty, and that by which it is sought to be corroborated is, to say the least, vague and unsatisfactory.

We are of the opinion that the court was right in refusing the divorce, and the decree will be affirmed with costs. It is so ordered.

Affirmed.

Carriers—Injury to Alighting Passenger.—A passenger, in alighting from a train without knowledge as to the existence of a platform, held not guilty of contributory negligence, because, the company having provided a suitable platform, it was his duty to use it to escape the imputation of negligence. Chesapeake & Ohio Ry. Co. v. Harris (Va.), 49 S. E. Rep. 997.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Sam'l Maddox, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Jesse Brown,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 31st day of July, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. H. ROZIER DULANY, 1320 F st. N. W., by Sam'l Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,304. Administration. 28-3t

L. Cabell Williamson, Attorney

In the Supreme Court of the District of Columbia,

Holding Probate Court.

In the Matter of the Estate of Ira A. Stafford, Deceased. Adm. No. 11,854.

Upon consideration of the reports herein filed by Daniel H. Safford and Albert P. Baldwin, executors of said estate, it is this 12th day of July, A. D. 1905, ordered that the sales made and reported by said executors of lot 153 in B. F. Gilbert's subdivision of square 675, house being known as 43 Myrtle street N. E., to H. C. Hile for Theresa O'Brien for the sum of two thousand dollars ($2,000); lots 154, 155, 156 in B. F. Gilbert's subdivision of square 675, houses being known as 45, 47, 49 Myrtle street, respectively, to James A. Cahill for the sum of one thousand nine hundred dollars ($1,900) each; lot 150 in D. L. Morrison's et al. subdivision of part of square 365, house being known as 1533 Columbia street N. W., to John White for the sum of two thousand eight hundred fifty dollars ($2,850); the south 9 feet 8 inches front on 8th street by full depth of lot 18 and the north 5 feet 4 inches front on 8th street by full depth of lot 19 in H. Crittenden's subdivision of square 398, house being known as 1430 8th street N. W., to John White for the sum of three thousand seven hundred twenty-five dollars ($3,725); the remainder interest in lot 164 subdivision of square 675, subject to certain alley rights, house being known as 65 Myrtle st. N. E., to Edith M. Cleland Carey for the sum of one thousand dollars ($1,000); and the remainder interest in lot 50 in William T. Davidson's subdivision of part of block 11, Bloomingdale, subject to certain covenants, house being known as —— Quincy street N. W., to Edith M. Cleland Carey for the sum of two thousand dollars ($2,000), be and every of said sales is hereby ratified and confirmed, unless cause to the contrary be shown to this court on or before the **12th day of August, A. D. 1905.** Provided a copy of this order be published once a week for two successive weeks occurring before said day in The Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 28-2t

Digitized by Google

Legal Notices.

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.

Minna Schafer v. the Unknown Heirs, Devisees, and Alienees of Charles Wayman.

In Equity. No. 25,470.

The object of this suit is to establish of record the title in fee simple by adverse possession of the complainant to all of original lot eight, in square one hundred and ninety-six, in the city of Washington, in the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order, which is to be published twice a month for said period of three months in The Washington Law Reporter and the Washington Post, otherwise the cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Jul 14, 21; aug 11, 18; sept 8, 15.

J. B. Larner, Solicitor

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

John Welsh, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Andrew Link, Deceased, Defendants. Equity. No. 25,428.

The object of this suit is to quiet the title of the complainant to lot numbered thirty-three (33) in Andrew J. Miller's subdivision of lots in square numbered eighty-four (84), as per plat recorded in the office of the surveyor of the District of Columbia, in liber 20 at folio 48. Upon motion of the complainant, by his solicitor, it is this 12th day of July, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Andrew Link, deceased, cause their appearance to be entered herein on or before the first rule day of **September, 1905,** otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based on the bill filed herein, that further publication is unnecessary. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-4t

John Selden, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Edes,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of July, A. D. 1906,** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1905. HENRY H. FLATHER, Riggs Natl. Bank; J. HUBLEY ASHTON, Pacific Building; THOMAS HYDE, 1537 28th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,883. Administration. 28-3t

M. J. Keane and Leo P. Harlow, Solicitors

In the Supreme Court of the District of Columbia.

Amelia Dorsey v. Julia Coffee.

No. 25,326. Equity Docket No. 56.

The object of this suit is to set aside deed from Amelia Dorsey to Julia Coffee of lot 15 in W. H. Gunnell's subdivision of square 333, Washington, District of Columbia, which deed is recorded in liber 2860, folio 301 et seq., of the records in the surveyor's office of the District of Columbia, on the ground that said deed was obtained by false representations, without consideration, and through fraud. Provided this order be published once a week for three successive weeks in the Washington Law Reporter. On motion of the complainant, it is this 10th day of July, A. D. 1905, ordered that the defendant cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-3t

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Henry Klinge,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of July, 1905. CATHERINE KLINGE, 257 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,031. Administration. 28-3t

F. Sprigg Perry, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily V. Sproston,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. WILLIAM G. SPROSTON, Hotel Atlamont, Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,984. Administration. 28-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Martha J. Coston,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 4th day of August, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Wood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,084. Administration. 28-3t

Chas. W. Clagett, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick Mann,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. ROBERT E. MANN, 207 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,040. Admn. 28-3t

L. Cabell Williamson and John A. Butler, Solicitors

In the Supreme Court of the District of Columbia.

Ethel Payne v. Herbert Payne, Ada Wood.

Equity No. 25,193.

The object of this suit is to secure a divorce on the ground of adultery. On motion of the petitioner by her solicitors, it is this 29th day of May, A. D. 1905, ordered that the co-respondent, **Ada Wood,** cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 28-3t

Digitized by Google

Legal Notices

F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors
In the Supreme Court of the District of Columbia.
Holding an Equity Court.
Patrick Fealy v. Anna Dore et al.
Equity. No. 25,509.

The object of this suit is the partition by sale of lot numbered thirty-three (33) in George Callaghan's subdivision of lots seventeen (17) and eighteen (18) in L. L. Chapman's subdivision of square numbered three hundred and thirty-five (335) as per plat in book 12, page 182, of the records of the surveyor's office in the District of Columbia. On motion of the complainant it is this 7th day of June, A. D. 1905, ordered that the defendants, **Timothy Fealy, Ellen Fealy, Johannah Fealy, Mary Columbus, Dennis Pierce Fealy, Thomas Pierce Fealy, Daniel Pierce Fealy, David Leahy, Mollie Jubain, Johannah Mc. Grath, Nellie Cahill, Thomas Feahy, Catherine Fealy, Mary O'Connor, James D. Leahy, Catherine Leahy, Ellen Collins, Johannah Hartnett, Edward O'Connell, and Patrick O'Connell,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 28-3t

---

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Fanny Heidenheimer, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 31st day of July, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1905. ELIAS HEIDENHEIMER, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,264. Administration. 28-3t

---

John Ridout, Solicitor
In the Supreme Court of the District of Columbia.

Phillip T. Hall v. The unknown heirs, devisees, and alienees of Charles A. Beatty, John M. Beatty, Mary F. Beatty, Randle H. C. Beatty, Thomas J. Beatty, Violetta Beatty, Sophia M. Beatty, Francis G. Beatty, Robert M. Beatty, Charles F. Beatty, George Gordon, Stephen West, John Davidson, Geo. F. Hawkins, Anne Campbell, Edward Crowley, John Threlkeld, William King, Sr.

In Equity. No. 25,442.

The object of this suit is to establish of record the title in fee simple of the complainant to all of lots numbered 311, 312, 313, and 314 of Phillip T. Hall's subdivision of parts of lots 306 and 270 in square numbered 1300 in the city of Washington, District of Columbia, formerly square 130 in that part of the said city of Washington formerly known as Georgetown, as per plat recorded in book 28, page 14, in the surveyor's office in the District of Columbia; also part of lot 306, in Mary A. Weaver et al.'s subdivision of parts of lots 269, 270, and 271, in said square 1300, as per plat recorded in book Georgetown No. 2, page 14, in said surveyor's office, and parts of lots 269 and 270 in said square 1300, said parts of said lots 306, 269, and 270 being fully described in the bill in this cause; also all of lot 275 in said square. On motion of the complainant, it is this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, otherwise the cause will be proceeded with as in case of default, sufficient cause having been shown for dispensing with a longer period of publication. THOS. H. ANDERSON, Justice. True copy. Test. J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. 28-3t

Legal Notices.

W. C. Prentiss, Solicitor
In the Supreme Court of the District of Columbia.
William H. Saunders et al. v. William Holmead et al.
Equity. No. 23,552. Doc. 58.

Upon consideration of the seventh report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating they have received from Anna E. Larigey an offer of three thousand five hundred dollars ($3,500.00) for the east twenty (20) feet front by depth thereof of lot numbered thirty-six (36), of Saunders and Galliher, trustees' subdivision, and all of lots numbered sixteen (16), twenty-nine (29), thirty (30), and the east twenty (20) feet front by the depth thereof of lot numbered twenty-eight (28), in the Washington Loan and Trust Company, trustees' subdivision of block numbered thirty-one (31), in "Petworth addition to the city of Washington," District of Columbia, all unimproved; and from the said Anna E. Larigey an offer of eight hundred dollars ($800.00) for all of lot numbered thirty-one (31), in the last-mentioned subdivision, unimproved, both of said amounts payable one-third (1/3) cash and the balance in one (1) and two (2) years with interest at six (6) per centum per annum, payable semi-annually, secured by deeds of trust on the property purchased, or all cash at the option of the purchaser, it is this 13th day of July, 1905, ordered, adjudged, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon compliance with the terms of sale, unless cause to the contrary be shown on or before the 7th day of August, 1905. Provided a copy of this order be published in The Washington Law Reporter and The Washington Evening Star once a week for three (3) successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-3t

---

A. B. Duvall and A. Leftwich Sinclair, Attorneys
In the Supreme Court of the District of Columbia,
Holding a District Court.
In Re the Condemnation of Land Necessary for a Plaza, or Circle, and New Streets, in the District of Columbia. District Court. No. 667.

Upon consideration of the petition of the Commissioners of the District of Columbia, filed in the above entitled cause, and upon motion of counsel for said Commissioners, it is, by the court, this 7th day of July, A. D. 1905, ordered that the clerk issue a citation to Thomas F. O'Neill, C. Mattie O'Neill, Lucy G. Palmer, Dora E. Rogers, Samuel Ganss, Jacob Eisenmann, Reuben Harris, Samuel Hord, George E. Woods, Orron A. Hamblett; William H. Barnes, trustee; William E. Edmonston and John L. Weaver, trustees; Jacob Field and Crosby E. Stoddard, trustees; Richard E. White, trustee; Herman R. Howenstein and Samuel Bieber, trustees; George W. Stickney and J. Paul Smith, trustees; Henry H. Bergmann and George M. Emmerich, trustees, and John C. Weedon and William Buckingham, trustees, to appear in this court on the 24th day of July, A. D. 1905, at 10 o'clock A. M., to answer said petition, and show cause why the prayers of said petition should not be granted, and why the following described land, in the city of Washington, District of Columbia, in fee simple, should not be condemned for a plaza, or circle, and new streets, namely, lots numbered one hundred and forty-eight (148), one hundred and forty-nine (149), one hundred and fifty-five (155), one hundred and ninety-eight (198), two hundred (200), two hundred and one (201), two hundred and two (202), two hundred and three (203), and two hundred and four (204), in square numbered seven hundred and twenty-one (721). And it is further ordered that a copy of said citation be served by the United States marshal for the District of Columbia upon such of the persons mentioned as may be found by him within the District of Columbia. It is further ordered that all persons having any interest in these proceedings be, and they are hereby, commanded and required to appear in this court on or before the 24th day of July, A. D. 1905, and to answer said petition, and to con tinue in attendance until the court shall have made its final order ratifying and confirming the report and award of the Commissioners, to be appointed by the court to appraise the respective interests of all persons concerned in the aforesaid land and premises. It is further ordered that a copy of this order and notice be published once in The Washington Law Reporter and on six secular days in The Washington Post, The Evening Star, and The Washington Times, newspapers published in said District, before the said 24th day of July, A. D. 1905. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 28-1t

Digitized by Google

Legal Notices.

SECOND INSERTION.

Malcolm Hufty, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary F. Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1905. MALCOLM HUFTY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,002. Administration. 27-3t

T. Percy Myers, Solicitor

In the Supreme Court of the District of Columbia.

Isabella Ricks v. Edward L. Edmonston et al.
In Equity, No. 24,716.

Upon consideration of the report of T. Percy Myers and Campbell Carrington, trustees, filed herein, stating that they have sold at public auction the east half of lot 28 in square 282, to Julius A. P. Dowling, Jr., as the agent for Mary A. Smith, for the sum of twenty-two hundred ($2,200) dollars, it is, by the court, this 6th day of July, A. D. 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Paul E. Johnson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Post, otherwise known as John Williams**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. NELLIE POST, 611 3d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,989. Administration. 27-3t

J. A. Sweeney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Charles Ippolito, Deceased.
No. 12,968. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Benjamin F. Guy, it is ordered this 7th day of July, A. D. 1905, that notice be and hereby is given to **Raphael Ippolito, Orto Essoline, Joe Otito, and mother of Charles Ippolito**, whose name and address is unknown, but is supposed to live in Italy, and to all others concerned, to appear in said court on **Tuesday, the 8th day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 27-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **James H. Hopkins**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of July, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS, AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d V.-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,285. Administration. 27-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Augustine Pavese**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. L. CABELL WILLIAMSON, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,029. Administration. 27-3t

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha A. Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1905. SIDNEY A. TAYLOR, 1015 3d st. N. W.; PHEOBE MILES, 818 4th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,986. Administration. 27-3t

Chas. F. Carusi, Solicitor

In the Supreme Court of the District of Columbia.

Annie E. Ward v. Henry C. Ward, Blanche Walker.
No. 25,355. Equity Docket No. 56.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, **Henry C. Ward**, on the ground of adultery. On motion of the complainant it is this 3d day of July, A. D. 1905, ordered that the defendant, **Blanche Walker**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Levi H. David, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna H. Stewart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. ANDREW STEWART, 1420 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,994. Administration. 27-3t

Digitized by Google

Legal Notices.

E. Hilton Jackson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Julia M. Adams, Deceased.

No. 13,028. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Decatur Morgan, it is ordered this 30th day of June, A. D. 1905, that notice be and hereby is given to **Charles H. Adams, Carrie M. Adams, and Frank M. Adams**, and to all others concerned, to appear in said court on **Monday, the 10th day of August, 1905, at ten o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 27-3t

THIRD INSERTION.

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta P. Meyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. JOHN H. F. MEYER, 904 23d st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12 998. Administration. 26-3t

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Arshak Abramian**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,021. Administration. 26-3t

W. A. McKenney, Solicitor

In the Supreme Court of the District of Columbia.

American Security and Trust Co., a Corporation, Complainant, v. Willard H. Myers et al., Defendants.

No. 25,432. Equity Docket No. —.

The object of this suit is to procure a sale of the interest of the defendant, Willard H. Myers, in and to the real and personal property held by the defendant, the National Safe Deposit Savings and Trust Company of the District of Columbia as administrator de bonis non, cum testamento annexo, and as trustee, under the will of Martha P. Myers, deceased, to satisfy the judgment of the complainant against said Willard H. Myers. On motion of the complainant, it is this 19th day of June, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Legal Notices.

E. B. Hay, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Anna L. Norville**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. EDWIN B. HAY, Bond Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,931. Administration. 26-3t

M. J. Keane and M. J. Colbert, Solicitors

[Filed June 22, 1905—J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia,

Holding Equity Court.

Patrick J. Daly, Complainant, v. Douglass S. Mackall, the Unknown Heirs, Alienees, and Devisees of Samuel L. Sterrett. Equity No. 24,224. Doc. 54.

The object of this suit is to declare the title of the complainant to lots thirty-three (33) and thirty-four (34) in Patrick J. Daly's subdivision of part of square 539, as per plat recorded in liber 28, folio 13, of the records of the surveyor's office for the District of Columbia, located in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is by the court, this 22d day of June, 1905, ordered that the defendants, the unknown heirs, devisees, and alienees of Samuel L. Sterrett, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this case will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 26-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Absalom Baird**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1905. WILLIAM BAIRD, State Home, Annapolis, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,022. Administration. 26-3t

W. H. Marlow, Jr., Solicitor

[Filed June 21, 1905. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia.

Thomas Tracy et al. v. James E. Mulligan et al.

Equity No. 24,670. Doc. 55.

Walter H. Marlow, Jr., the trustee herein, having reported sale at public auction of part of original lot one (1) in square seven hundred and forty-nine (749) in the city of Washington, District of Columbia, more fully described by metes and bounds in these proceedings, and otherwise known as lot forty-two (42) in O'Donnoghue's subdivision of said square, as per plat in Book C. H. B., page 137, in the surveyor's office of the District of Columbia, improved by house No. 1004 Third street N. E., to Edward A. Scanlon, for the sum of ten hundred and forty-five dollars ($1045), all cash; it is therefore, this twenty-first (21st) day of June, A. D. 1905, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the **twenty-second (22d) day of July, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 26-3t

Digitized by Google

Legal Notices.

Wm. A. Donch, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martin Mangold**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **26th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. BENJAMIN F. MANGOLD, St. Elizabeth, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,874. Administration. 26-3t

Oscar Nauck, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Mary Cosgrove**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 17th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of June, 1905. EDWIN NAUCK, by Oscar Nauck, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,179. Administration. 26-3t

Wm. H. Baden, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Israel E. Kirk, Deceased.
No. 12,983. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by August Donath, one of the creditors of said decedent, it is ordered, this 28th day of June, A. D. 1905, that notice be and hereby is given to **William G. Kirk, Charles Mahon Kirk, Raymond Kirk, and Nell Kirk Taylor**, sole heirs at law and next of kin of said decedent, and to all others concerned, to appear in said court on **Tuesday, the 1st day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

C. F. Carusi, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Mary C. Shafer et al., by their Next Friend, John L. Cassin, v. George D. Shafer. No. 3221.

George D. Shafer, trustee, having reported that he has received from Thomas W. Barker an offer of five hundred dollars, cash, for a part of a tract of land situate in the county of Washington, District of Columbia, known as "Fox," lying adjacent to the Georgetown College property, and beginning for the same in the south line of the said college property thirty-eight feet east of the intersection of the said college property and the Foxall estate, thence south 1½° west 120.65 feet, thence east at right angles to said line 20 feet, thence north parallel to said first line 120.65 feet to the line of the college property, and thence west in a straight line to the beginning, it is by the court, this 29th day of June, A. D. 1905, adjudged, ordered, and decreed that said trustee be and he is hereby authorized to accept said offer and convey said real estate to said purchaser upon payment of the purchase money, unless cause to contrary be shown on or before the **29th day of July, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 26-3t

Legal Notices.

Campbell Carrington, Solicitor

In the Supreme Court of the District of Columbia.
William H. Johnson v. Alice Johnson.
No. 21,976. Equity Docket No. 56.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and the Washington Times. On motion of the complainant, by his solicitor, Campbell Carrington, it is this 28th day of June, A. D. 1905, ordered that the defendant, **Alice Johnson**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

Wm. L. Elterich, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Heinrich Wilhelm Feador Dukehart, Deceased. No. 13,010. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John Waldman and H. A. Schenerman, it is ordered this 23d day of June, A. D. 1905, that notice be and hereby is given to **the unknown heirs of the decedent**, and to all others concerned, to appear in said court on **Monday, the 31st day of July, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

Fillmore Beall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Trueman D. Beckett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of June, 1905. CATHERINE E. BECKETT, 454 10th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,932. Administration. 26-3t

In the Supreme Court of the District of Columbia.
Charlotte Conrad et al. v. Minnie F. Briscoe.
Equity. No. 25,185.

Upon consideration of the report of Thomas Walker and George F. Collins, trustees, this day filed, it is, this 29th day of June, 1905, adjudged and ordered by the court that the sale thereby reported of part lot 26, in square 411, to Clement Dorsey for the sum of $1,595, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the **31st day of July, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Theophilus Bray**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1905. EDWIN YARNOLD, 1222 C st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,017. Administration. 26-3t

Digitized by Google

Legal Notices.

R. B. Behrends, Attorney

In the Supreme Court of the District of Columbia.
In Re Estate of J. K. Wilhelmina Kirchner, Deceased.
No. 8794.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 18th day of April, 1898, purporting to be the last will and testament of J. K. Wilhelmina Kirchner, deceased, has been returned as to Frederick W. Boucher, Edward Boucher, and Rosa Mitchell "not to be found," it is, this 27th day of June, 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **10th day of October, 1905**, and that this order and the substance of said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter, and twice a week for the same period in The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

ISSUES.

1. Was the said paper writing propounded as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, bearing date the 18th day of April, 1898, executed by her in due form of law? 2. Was the said J. K. Wilhelmina Kirchner, at the time of the execution of said paper writing, bearing date the 18th day of April, 1898, of sound mind, and capable of executing a valid deed or contract? 3. Was the said paper writing, bearing date the 18th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured through the undue influence, importunities, suggestions, and persuasions of any person or persons? 4. Was the said paper writing, bearing date the 18th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured by the fraud, deceit, or misrepresentations practiced upon her by any person or persons? 26-4t

Daniel W. O'Donoghue, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James D. Sterling**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. THOMAS G. SMYTH, 2436 Pa. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,005. Administration. 26-3t

Sheehy & Hogan, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary J. Cullen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1905. CATHERINE C. CULLEN, 417 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,996. Administration. 26-3t

FOURTH INSERTION.

Hallam & Hallam, Solicitors

In the Supreme Court of the District of Columbia.
Calvin Tibbs, Complainant, v. James Bennett's Unknown Heirs, Defendants.
Equity. No. 25,219. Doc. No 56.

The object of this suit is to declare the title of complainant to lot two (2) in square five hundred and ninety-nine (599), in the city of Washington, District of Columbia, to be good in fee simple by adverse possession. On motion of the complainant, it is this 29th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, devisees, and alienees of James Bennett**, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. j 2-9, j 7-14, a 4-11

Legal Notices.

FIFTH INSERTION.

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.
Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 23 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 23 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry**, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; june 2-9; july 7-14; aug. 4-11

SIXTH INSERTION.

Filed May 10, 1905.—J. R. Young, Clerk.

John R. Shields, Solicitor

In the Supreme Court of the District of Columbia.
Pauline Thornton v. Unknown Heirs, Alienees, and Devisees of James H. Smith, the Sisters of the Visitation of Georgetown, George W. Walsh, and George W. Walsh, Trustee. Equity No. 25,212.

The object of this suit is to obtain a decree to establish as complete and perfect in fee simple by adverse possession the title of complainant to part of original lot fourteen (14) in square six hundred twenty (620), in Washington City, District of Columbia, said part of lot being described as follows, viz: beginning at a point on the line of north "M" street, distant twenty (20) feet east of the northwest corner of said lot fourteen (14) and running thence west twenty (20) feet; thence south along the west line of said lot fourteen (14) one hundred and thirty-six (136) feet to the rear or south line of said lot; thence east twenty (20) feet and thence north one hundred thirty-six (136) feet to the place of beginning; and to enjoin the defendants from asserting any title or claim thereto. On motion of complainant, by John R. Shields, her solicitor, it is, this 10th day of May, A. D. 1905, ordered that the defendants above named cause their appearance to be entered herein on or before the first rule day, occurring three months after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. This order to be published twice a month for three months prior to said return day in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk. By R. J. Meigs, Jr., Asst. Clerk. may 12, 19; june 9, 16; july 7, 14.

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 29

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JULY 21, 1905

CONTENTS.

Editorial 449
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Agnes E. Marfield, appellant, v. Robert H. McMurdy 450
John C. Norwood et al., executors, appellants, v. John R. Francis and Anna M. Johnson 455
J. Harry Byram, Jr., appellant, v. The United States 458
Legal Notices 459

The American Bar Association.

The twenty-eighth annual meeting of the American Bar Association will be held at Narragansett Pier, Rhode Island, August 23-25, 1905. On the same dates the session of the Section of Legal Education and the Section of Patent, Trademark, and Copyright Law will be held. On Tuesday, August 22, at 8 p. m., there will be a meeting of the Association of American Law Schools. The second conference of the State Boards of Law Examiners will be held on Tuesday, August 22, at 8 p. m.

The fifteenth conference of the Commissioners on Uniform State Laws will begin its sessions on Friday, August 18, at 10 a. m., being the week previous to the meeting of the Association.

Service of Process on Agents of Foreign Corporations.

In Chicago Board of Trade v. Hammond Elevator Company et al., decided May, 1905, by the Supreme Court of the United States and reported in the advance sheets for July 1, it is held that local "correspondents" of a foreign corporation which furnishes them with quotations to enable them to take orders from their customers for trades in shares of stock, may properly be treated as its agents for the purpose of service of process, although their relations to the corporation, as between themselves, are fixed by formal contract, in which agency is expressly disclaimed, where the method of doing business shows that the corporation is the party really interested in the transactions, and the correspondents are compensated by a commission charged the customer for their services.

Accord and Satisfaction—Check as Payment in Full.

In Canton Coal Co. v. Parlin & Orendorff Co., decided by the Supreme Court of Illinois, a debtor sent to a creditor a check accompanied by a letter saying it was in full of account. The creditor's bookkeeper made out a statement of the account as shown by the books, and credited the check, leaving a balance due. He then took the statement to the debtor, saying it showed the amount due, and that the check had been credited, and requested payment of the balance. The debtor stated that he did not owe anything, and renewed that statement when the bookkeeper said the check had been merely credited on the account. The court held that the facts did not justify an inference that the condition on which the check was sent was waived by the debtor so as to prevent its retention from constituting an accord and satisfaction. The court said: "If the plaintiff was not willing to accept the check as sent in full of the account and acknowledge the receipt of it, as requested, it ought to have returned it. The rule that required it to do so is neither harsh nor unjust, but it secured to the defendant the right to have its check received as offered, if received at all, unless there was a subsequent waiver of the condition."

Children as Witnesses.

As illustrating the rule now prevailing with regard to allowing children to testify, provided they have sufficient intelligence to understand the nature of their act and sufficient sense of duty to comprehend the obligation to speak the truth, two recent decisions by courts of last resort may be noted. In Clark v. Finnegan, decided by the Supreme Court of Iowa (103 N. W. 970), it was held that under section 4601 of the Code of that State, which provides that a witness must have sufficient capacity to understand the obligation of an oath, but fixes no age limit, a child of 7 years of age, whose examination and testimony disclosed that he was of more than average intelligence and understood the difference between truth and falsehood, was competent to testify.

In Commonwealth v. Furman, decided by the Supreme Court of Pennsylvania (60 Atl. 1089), the appeal was from a conviction for murder. It was held that where a witness 8 years old clearly comprehends the difference between truth and falsehood and his duty to tell the truth, he is substantially competent as a witness.

In the case of Clark v. Finnegan the court said:

Digitized by Google

"The single question for determination in this case is whether Joseph Clark, a boy 7 years of age, was a competent witness against the defendants. He was sworn, and stated to the court that he understood that he was to tell the truth, whereupon his testimony was received without objection. There is no particular age at which a child becomes competent as a witness. The statute fixes no age, and requires only that the witness have sufficient capacity to understand the obligation of an oath. Code, sec. 4601. A child of sufficient maturity and intelligence to receive correct impressions from its surroundings, and to remember and correctly narrate transactions, is a competent witness, if he also comprehend the meaning and obligation of an oath. State v. King, 117 Iowa, 484, 91 N. W. 768; State v. Todd, 110 Iowa, 632, 82 N. W. 322; People, &c., v. Bernal, 10 Cal. 66. If a child has the necessary intelligence and appreciates the moral duty to tell the truth, he need not fully understand the nature of an oath, or have any particular religious belief or training to qualify him as a witness. State v. King, supra; 2 Elliott on Evidence, 766. The testimony of children only 5 or 6 years of age has been held competent. State v. Juneau, 88 Wis. 180, 59 N. W. 580, 24 L. R. A. 857, 43 Am. St. Rep. 877; Wheeler v. United States, 159 U. S. 523, 16 Sup. Ct. 93, 40 L. ed. 244; Commonwealth v. Robinson, 165 Mass. 426, 43 N. E. 121; Williams v. United States: 22 Wash. Law Rep. 457; McGuire v. People, &c., 44 Mich. 286, 6 N. W. 669, 38 Am. Rep. 265; Johnson v. State, 61 Ga. 35.

"The examination and testimony of the witness in this case showed that he was of more than average intelligence, and that he understood the difference between truth and falsehood, and we think he was a competent witness. The judgment is therefore affirmed."

Malicious Prosecution—Probable Cause.—The want of probable cause does not mean the want of any cause, but the want of any reasonable cause, such as would persuade a man of ordinary care and prudence to believe in the truth of the charge.—Burt v. Smith (N. Y.), 73 N. E. Rep. 495.

Master and Servant—Defective Appliances.—A master owes his servant reasonable care, in view of the situation of the parties, the nature of the business, and the character of the appliances. Falton v. Crosby & Beckley Co. (W. Va.), 49 S. E. Rep. 1012.

Master and Servant—Safe Place to Work.—Where a servant has as good an opportunity as the master to know the dangers connected with his employment, and makes no complaint, he can not recover for injuries on the ground that the master did not furnish him a safe place to work. Roth v. Eccles (Utah), 79 Pac. Rep. 918

Landlord and Tenant—Liability for Injury to Third Person.—A landlord held not liable for injuries to a third person caused by a defective approach to a rented house, which approach was in the exclusive possession of the tenant. Ward v. Hinkleman (Wash.), 79 Pac. Rep. 956.

Court of Appeals of the District of Columbia.

AGNES E. MARFIELD, APPELLANT,
v.
ROBERT H. McMURDY.

WILLS; EXECUTOR'S COMPENSATION; DISTRIBUTION OF ESTATE.

1. Testator, by his will, provided that a son, named as one of the executors, should receive out of the income of the estate the sum of $600 annually during the time he acted as executor as full compensation for his services as such. It was evident from the entire scheme of the will that testator contemplated the executorship would continue until the death or remarriage of his wife, upon the happening of either of which events final distribution of the estate was to be had. *Held*, that the son was entitled to the stipulated annual compensation until the final distribution of the estate; and if in any year the income was insufficient, after payment of fixed charges, to pay such compensation, the deficiency may be made up from the excess of income in succeeding years.
2. Testator, by his will, authorized his executors to sell certain property and reinvest the proceeds, and directed that the net income should be distributed among his widow and two children in the proportions of one-third to each, until the death or remarriage of the widow, when the estate should be distributed between the two children. *Held* that the court below properly refused to decree a distribution of the principal estate before the period of distribution fixed by the will arrived.

No. 1508. Decided April 4, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,259, in suit for an accounting by an executor, and for other purposes. Affirmed.

Mr. Smith Thompson, Jr., and *Mr. Charles T. Hendler* for the appellant.

Mr. Clarence R. Wilson and *Mr. W. E. Church* for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

One Robert McMurdy, a resident of the District, died herein on March 17, 1892, leaving a will, which was duly admitted to probate, whereby he devised property, both real and personal. Subsequently to the execution of the will, he made a codicil to it, which purported to change one clause or item of the will, and to substitute another disposition in the place of it. He left a widow surviving him, who was his wife by a second marriage, Helen Becker McMurdy; and two children by a former marriage, the appellant, Agnes E. Marfeld, a widow, and the appellee, Robert H. McMurdy. The son Robert H. McMurdy and the widow Helen Becker McMurdy were constituted executors of the will; but the widow afterwards renounced the executorship and Robert H. McMurdy alone qualified as executor, and yet remains in the execution of the trust.

In the will, after some provision for two grandchildren, who were the children of a deceased son, and after the bequest of a legacy of $6,000 to his daughter, the appellant; the testator, makes this provision, which comes up for construction in the present case:

"Item 5. I give to my son, Robert H. McMurdy, of Chicago, Illinois, out of the income of my estate, the sum of $600 annually during the time that he acts as executor of this will in full compensation for his services as such executor."

Digitized by Google

Item 6 of the will contained a devise of his residence near Takoma, in this District, together with some adjacent lots, to his wife for her natural life or until remarriage, with some provision for its management and a certain disposition of it after the termination of the estate so limited to the wife. It is this clause of the will that was revoked by the codicil, which substituted in the place of it the following:

"Item 6. I devise & bequeath to my wife, Helen Becker McMurdy, the undisturbed use of my present residence in Takoma, D. C. to maintain, together with the lot on which said residence now stands, at her own expence, including taxes & assessments on said real estate, so long as she shall remain unmarried and during her natural life, unless she remarries before the end thereof. This devise does not include any part of the adjoining lot, of which the southern seven feet *was* reserved in the former will. Said property may be sold by my executors at the request of my said wife and the proceeds thereof, (less three thousand dollars) invested & the income therefrom paid to her annually during her natural life unless she remarries; in which case her interest in said property shall cease

"As the mortgage of three thousand has been cancelled by funds from the general estate I direct when the property is sold that three thousand dollars of the purchase money shall be invested for the benefit of the heirs of my estate

"In case my property on 14 St. in the city, is not sold before my death & in the opinion of my executors it is desirable; after using the interest on my Dayton property to pay all taxes, the balance, except fifteen hundred dollars, shall be distributed equally between my wife & my two children & the other fifteen hundred dollars shall be invested as a part of the principal of my estate This is to apply to all the Dayton notes as they fall due."

Item 8 of the will was as follows:

"Item 8. After the payment of the necessary expenses of administration, care and expenses of property, taxes, executor's salary, and other expenses connected with the execution of this will and its several provisions, the income of my estate, real and personal, I devise and bequeath to said Agnes Marfield and Robert H. McMurdy, my children aforesaid, their heirs and assigns, and to said Helen Becker McMurdy, my said wife, in equal parts, one-third part thereof to each, to be paid annually."

Item 9 devised the remainder of the estate, after the death or remarriage of his wife, to his two children, Agnes Marfield and Robert H. McMurdy. Item 10 provided that the devise and bequest to his wife should be in lieu of dower; and item 11 provided that his executors should have full power to convey and exchange his estate and reinvest the proceeds; and it named his son, Robert H. McMurdy, and his wife, Helen Becker McMurdy, as the executors of the will, without bond or liability to account in any manner. In the event of the death of Robert H. McMurdy before the testator, the daughter was appointed coexecutor with the wife.

These are all the parts of the will and codicil that are deemed pertinent to the issues in the present case. It should be added, perhaps, that it would appear that the testator had legal assistance in drawing the will, but that the codicil was his own unaided effort. It should also be added, as appears in the proceedings in the present case, that the testator owned some unimproved lots, known as the Columbian University lots, and mentioned in the codicil as the "property on Fourteenth street, in this city," and which, it seems, was valued at one time about $30,000 or $40,000; and that he had also owned some unimproved lots in Dayton, Ohio, which he had sold and upon which he had taken a mortgage and mortgage notes amounting to about $15,000. These are the "Dayton property" and "Dayton notes" referred to in the codicil. It appears that it was impossible for a long time to sell the Fourteenth street lots, and that they were finally sold for about $28,000, of which part was reserved on mortgage; and also that, on account of the insolvency of the purchaser of the Dayton lots, the executor found himself constrained to take back that property and to surrender the purchasers' notes to him.

On May 6, 1901, the present proceedings were commenced by the appellant Agnes E. Marfield, as complainant in the Supreme Court of the District by filing her bill in equity against Robert H. McMurdy, the widow Helen Becker McMurdy, and John H. McMurdy, a legatee under the will, but who is not concerned with the proceedings as they now stand. In this bill there were some charges of misfeasance and malfeasance on the part of the executor Robert H. McMurdy, which met with an emphatic denial from the latter, and all of which have been withdrawn or abandoned; and the prayer of the bill was for an accounting by the executor, for his removal as executor and trustee, for the removal of Helen Becker McMurdy from the trust, and for the appointment of the Washington Loan and Trust Company in their place and stead, to sell all the property of the estate in the District of Columbia and to divide the proceeds between the appellant and the appellee "upon their giving to the said Helen Becker McMurdy or to this court (the Supreme Court of the District) satisfactory assurances of the payment annually to said Helen Becker McMurdy during her natural life or until she remarry, of a sum equal to one-third of the annual interest at a reasonable rate accruing upon the amount so paid to said complainant and defendant Robert H. McMurdy from the proceeds of sale of said property."

There was no request for any construction of the will or codicil, and no suggestion that either of them needed construction.

Helen Becker McMurdy did not answer the bill, and permitted it to go by default; and she subsequently renounced the trust both of executrix and of trustee. She is not a party to this appeal.

Robert H. McMurdy answered vigorously, denied all malfeasance and misfeasance, and gave a full and elaborate account of his trust.

Thereupon, on January 25, 1902, a consent decree was rendered, wherein it was adjudged and decreed that all objections and exceptions to the action of Robert H. McMurdy as trustee be overruled; that the Washington Loan and

Digitized by Google

Trust Company be appointed co-trustee with him in the place of Helen Becker McMurdy; that, as soon as it could well be done without sacrifice, the trustees should sell the so-called Columbian University lots, on Fourteenth street, and all the other property of the testator in the District of Columbia, under the approval of the court; and that they should hold the proceeds subject to the further order of the court. And there was this further order included in the decree:

"It is further ordered that the question of compensation to the said Robert H. McMurdy under the provisions of said will, and the rights of the legatees under the said will to the proceeds of said real estate are hereby reserved by the court to be passed upon when there shall be funds arising from the sales aforesaid in the hands of the trustees."

There was then an accounting before the auditor by Robert H. McMurdy, and his account was accepted and approved by all parties and ratified by the court. It covered the period down to January 25, 1902, and showed a balance in his hands at that date of $607.74, which he turned over to himself and his associate as the existing trustees. The order of ratification reserved to the complainant the right to contest his claim to compensation as executor and trustee.

The next proceeding that appears in the present record is the stipulation entered into on May 12, 1904, and filed in the cause on October 27, 1904, which was executed by Robert H. McMurdy in person, and by the solicitor for the complainant and the solicitor for the Washington Loan and Trust Company, and wherein it was agreed that the questions reserved by the decree of January 25, 1902, should now be submitted to the court for its determination upon the record and certain conceded facts. These facts were the following:

1. That the Columbian University lots had been sold for $28,710, out of which, after payment of sundry expenses, there remained in the hands of the trustees between $1,000 and $1,500 in cash, and promissory notes amounting to $19,647.47, drawing 5 per cent interest payable semi-annually.

2. That the annual charges upon the estate in the hands of the trustees, without reference to the compensation claimed by Robert H. McMurdy, are less than the amount of the income of the estate.

3. That no compensation had been received by Robert H. McMurdy beyond the sum of $694.15 found by the auditor's report.

And in the stipulation the questions reserved for determination by the court are specifically formulated in these terms:

(1) Whether, under the provisions of said will, said Robert H. McMurdy is entitled to any, and if any, what compensation over and above the sum of $694.15 already received by him as shown by said auditor's report, and from what fund or funds the same shall be payable.

(2) Whether it is the duty of the trustees or within their power to divide the proceeds now in their hands of the sale of the University Park property in the District of Columbia, between the said Robert H. McMurdy and Agnes E. Marfield.

Thereupon the court rendered the following decree:

"Said questions having now been presented to the court upon said stipulation and the papers therein referred to, and counsel for the respective parties having been heard, and said second question having been treated in argument as if it embraced Helen Becker McMurdy as one of the proposed distributees, which counsel for complainant insist was the intention of the stipulation, and the court having duly considered the matter, it is this 8th day of November, 1904, adjudged, ordered, and decreed:

"1. That the said Robert H. McMurdy is entitled to compensation under the provisions of the will of said Robert H. McMurdy, deceased, at the rate of $600 per annum payable out of the income of said estate until the final distribution of the said estate, or until breach or determination of the trust reposed in him.

"2. That there be paid to said Robert H. McMurdy out of any excess of income now or hereafter arising or existing over the annual charges upon said estate other than said compensation and arrearages, so much as may be necessary and so far as the same will extend to pay:

"(a) All arrearages of said compensation now existing or hereafter arising.

"(b) Said compensation at the rate of $600 per annum until the final distribution of the said estate, or until the breach or determination of his trust.

"3. That, after the payment of such arrearages and annual compensation, the balance of the income, if any, from time to time arising, be disposed of according to the provisions of the will of said Robert McMurdy, deceased.

"4. It is further adjudged, ordered, and decreed that it is not the duty of the executors or trustees of the will of Robert H. McMurdy, deceased, under any of the provisions of said will or of the codicil thereto, nor have the said executors or trustees any power or authority thereunder to divide the proceeds now in their hands of the sale of the University Park property in the District of Columbia between Robert H. McMurdy and Agnes E. Marfield, or to make any distribution whatever of the proceeds of said sale or of any other part of the corpus of said estate now being or hereafter coming into their hands among the beneficiaries named in said will and codicil, until the death or remarriage of Helen Becker McMurdy, widow of said testator.

"This decree is made without any prejudice to any questions which may hereafter arise touching the commissions of the Washington Loan and Trust Company as executor or trustee under said will."

From this decree the complainant has appealed to this court.

There are no assignments of error by the appellant, and, therefore, under a strict construction of the rules of this court the appeal should be dismissed. But in the appellant's brief, at the beginning of what is called the argument, there is a statement that "the questions to be determined are: (1) Is the trustee Robert H. McMurdy entitled to the sum of $600 per annum out of the income of the estate until the final distribution thereof? (2) Should the said trustee Robert H. McMurdy be paid all arrearages

Digitized by Google

of said compensation now existing or hereafter arising out of any excess of income now or hereafter arising or existing over the annual charges upon said estate? (3) Should the proceeds of the sale of lots 12 and 13, in block 43, now in the hands of the trustees, be distributed equally to the widow and children of the testator?" And inasmuch as the decree appealed from itself enumerates the questions that were decided by the court below, and there is no doubt upon the record as to what questions were actually involved and what questions were decided, we think that, under the circumstances of this case, the questions so formulated may be taken as the equivalent of formal assignments of error.

1. The first question is whether the executor, Robert H. McMurdy, is entitled to the sum of $600 per annum out of the income of the estate until the final distribution thereof.

The answer to this question is not difficult. The will expressly provides for such compensation. The provision is that out of the income of the estate Robert H. McMurdy, the son of the testator, should receive the sum of $600 annually; that is, the sum of $600 for each and every year during the time that he acts as executor of the will, in full compensation for his services as such executor; and it is evident from the whole scheme of the will that the testator contemplated that the executorship should last for several years, certainly until the death or remarriage of his widow. The argument of the appellant in opposition to this is, that the executorship, properly so called, ceased at the termination of the period of administration, that is, in about twelve or thirteen months after the issue of letters testamentary and the settlement of account or the lapse of the time for such settlement in the probate court; and that thereafter the appellee held the estate as trustee, with compensation, if any, dependent upon a court of equity. But this is an argument based upon words, not upon substantial things. The executor does not cease to be executor because the period of administration, so called, may be passed. He is still executor as long as he has anything under the will to execute. He is just as much a trustee during the period of administration as after it. Every executor, administrator, guardian, receiver, assignee, and other person or persons acting in a fiduciary capacity, is a trustee; and the only difference, at all events, the principal difference, between an executor during the period of administration and an executor after the lapse of the period of administration, is that the former is responsible to the probate court for the faithful execution of his trust, the latter to a court of equity. He is equally a trustee at both times, and equally an executor; and it is very clear from the testator's will, that, by whatever title he should be designated, the executor should have a compensation of $600 a year for each and every year during which he should continue to be engaged in the execution of the will.

It is not to the point that the construction would offer a premium to executors to strive for the indefinite prolongation of their executorship. To meet any such effort a court of equity affords abundant remedy.

If authorities are needed to sustain a proposition which seems to us to be very plain, several will be found cited in the brief for the appellee, and there are none to the contrary. See Colt v. Colt, 111 U. S. 579; McBurney v. Carson, 99 U. S. 572; Dorr v. Wainwright, 13 Pick. 328; Saunderson v. Stearns, 6 Mass. 37.

In the case of Colt v. Colt the Supreme Court of the United States said:

"The five hundred shares of stock came into their hands as executors. They remained there for the general trust of the administration of the estate until they were fully served. The possession of them thereafter the law imputed to them still as executors, but in trust for the special purposes to which by the will they were appropriated. There was no change of possession; there was no change of the legal title; there was but a succession of uses according to the terms of the will. They continued to hold this stock as executors, although in trust, until its actual payment to the legatees. . . . As long as personal property is held by executors, as part of the estate of the deceased, for the payment of debts or legacies or as a residuum to be distributed, they hold it by virtue of their office and are accountable for it as executors; their liability only ceases when it has been taken out of the estate of the testator and appropriated to and made the property of the cestui que trust."

It will be found upon examination of them, although some incautious expressions are used, that the cases cited on behalf of the appellant do not at all contravene this doctrine. Take, for illustration, the case of Connor v. Ogle, 4 Md. Chan. 425, where it is said that "where the same person is both trustee and executor under a will, and settles up the personal estate in the Orphans' Court, the balance, after such settlement, remains in his hands as trustee, and not as executor." The context plainly shows that the meaning is that the executor no longer holds the property for administration in the Orphans' Court, but as a trustee responsible to a court of equity. And a like explanation holds of the other cases cited. State v. Cheston, 51 Md. 377; Hanson v. Worthington, 12 Md. 418; Seegar v. State, 6 H. & J. 139, and Drury v. Natick, 10 Allen (Mass.), 174.

2. The appellant has divided the first question determined in the court below into two, and makes this the second of her questions: "Should the trustee be paid all the arrearages of said compensation now existing or hereafter arising out of any excess of income now or hereafter arising or existing over the annual charges upon said estate?" But the solution of this question naturally follows the first. The same provision of the will governs both. Had the will limited the payment of executor's annual compensation to the annual income of the estate, a different question might have been presented. But the provision is that out of the income generally without any limitation the executor should receive compensation at the rate of $600 a year. Necessarily, if the income is less in one year and greater in another, the deficiency of compensation in one year may be made up by the excess in the other year. Wilson v. Tyson, 61 Md. 575; Stewart v. Chambers, 2 Sandf. Ch. (N. Y.) 382; In re Chauncey, 119 N. Y. 85; Addison v. Smith, 83 Me. 551; Smith v. Fellows, 131 Mass. 20; Booth v. Coulton, L. R. 5 Chan.

Digitized by Google

App. 684; Pitt v. Lord Daere, L. R. 3 Ch. Div. 295.

To the contrary, on behalf of the appellant are cited the cases of Sitwell v. Bernard, 6 Ves. 520, and Casamajor v. Pearson, 8 Clark & Finnelly's Rep. 69. We do not regard either of these as adverse to the proposition above stated, and we think that a careful examination of them will so show. Without going at length into such examination here, it must suffice to say that what was held in the case of Sitwell v. Bernard was that when trustees had been ordered by the will of a testator to expend certain money in the purchase of real estate and unexpected obstacles arose which postponed such purchase for a long time, the beneficiaries of the proposed purchase were entitled to interest on the money from the time at which it should have been invested; and that in the case of Casamajor v. Pearson it was held that where certain property was directed to be sold and the proceeds invested, and certain annuities to be paid out of the income to be derived from such investment and sale of the property, and investment of the proceeds of sale were prevented for a long time by unexpected occurrences, and afterwards such sale and investment were effected, the annuities should be paid only out of the income of the years during which there was income realized, inasmuch as there were other interests also to be provided for equally with those of the annuitants, which must have failed if the annuitants had been allowed for all the years from the beginning. This last case is a peculiar one, and depends upon its own peculiar circumstances, but it is not believed to offer any criterion for the determination of the case now before us. Here there are no provisions of the will that would fail in the event that the trustee received all the compensation that was intended for him. There may be less of income to be distributed, but that does not operate as a failure of any provision of the will.

3. The appellant's third question is not the question that was decided by the court below. The question, as now phrased by the appellant, is whether the proceeds of sale now in the hands of the trustees should be distributed equally to the widow and children of the testator. The question formulated in the stipulation between the parties, and which the court below decided, is whether these proceeds are distributable between the two children of the testator, without any reference to the interest of the widow, which is a very different proposition. It is, perhaps, unimportant in our present consideration of the case how the question is formulated, for the answer in either event must be in the negative.

It would be a plain and palpable violation of the will to divide these proceeds of sale between the appellant and the appellee without reference to the widow's rights. The widow is entitled to one-third part of the net income of the estate during her life or until her remarriage; and for the purpose of receiving such part she is entitled to have the estate kept intact, as indeed are each of the other parties; and she is not required to have "satisfactory assurances," whatever they may be, forced upon her, instead of the provision made by the testator, as suggested by the bill of complaint. Nor should the appellee against his will be required to give such "satisfactory assurances." It is too plain for argument that this question was decided rightly by the court below that further consideration of it is deemed unnecessary.

Assuming, however, that the question as now formulated by the appellant is before us for determination, we think that this question also must be answered in the negative. The appellant's argument assumes that the codicil to the will provided for the sale of the Fourteenth street or University Park lots and for the distribution of the proceeds of sale equally between the widow and the two children of the testator, with the reservation of two sums of fifteen hundred dollars each. We do not find that it does so provide or that it repeals any portion of the will, except the item 6, for which it expressly purports to be a substitute.

The codicil is very inartificially drawn and is somewhat obscure in its terms. It is understood to have been the work of the testator himself without legal assistance, and therefore very naturally falls short of the precision which legal advice might have given him. But we find in it no provision for the sale of the Fourteenth street lots. Such provision was unnecessary. The authority had already been given by item 11 of the original will in the most ample manner. The evident purpose of the last clause of the codicil, which is supposed without warrant to give this power of sale and direction for distribution, is to provide for the application of the so-called Dayton notes, in the event that the Fourteenth street lots should not be sold before the testator's death. It can not reasonably be construed into a provision for the sale of these lots and a distribution of the proceeds of sale, and it was evidently not the intention of the testator anywhere, either in the will or the codicil, to direct a distribution of his estate, except to a very limited extent, before the death or remarriage of his widow.

From what we have said it follows in our opinion that the decree appealed from is right and just, and that it should be affirmed with costs. And it is so ordered.

Affirmed.

Landlord and Tenant—Rights of Lessee.—A lessor is bound to protect his lessee as against persons setting up claim to property, and the possession of the lessee is the possession of the lessor, and the disturbance of one is the disturbance of the other. Bright v. Bell (La.), 37 So. Rep. 976.

Carriers—Injury to Passenger.—Where a street car company stops its cars for passengers, it is charged with the highest degree of care to see that all passengers get to a place of safety before starting its cars. Normile v. Wheeling Traction Co. (W. Va.), 49 S. E. Rep. 1030.

Limitation of Actions—New Promise.—Where a new promise is relied on to remove the bar of limitations, there must be an express promise, or an unconditional acknowledgment of the debt from which an implied promise will arise.—Bank of Union v. Nickell (W. Va.), 49 S. E. Rep. 1003.

Digitized by Google

Court of Appeals of the District of Columbia.

JOHN C. NORWOOD ET AL., EXECUTORS, APPELLANTS,
v.
JOHN R. FRANCIS AND ANNA M. JOHNSON.

UNINCORPORATED JOINT STOCK COMPANIES; LIABILITY OF MEMBERS AS PARTNERS; WITHDRAWING MEMBER; HUSBAND AND WIFE AS PARTNERS.

1. An unincorporated joint stock company, organized and doing business as a savings bank in this District under written articles of agreement, is in law a partnership, and its members each liable for all its debts.
2. Where such articles of agreement provide that members may withdraw by giving notice and that settlement shall thereupon be made in a manner prescribed, a member giving such notice ceases, so far as other stockholders are concerned, to be a partner, and on failure of the company to pay the amount due for his shares, may sell them to a third party.
3. A person who, subsequent to the withdrawal of such member and without knowledge that he was or at any time had been connected with the company, deposits money with the bank, can not, on failure of the bank, hold him liable for the amount of the deposit.
4. Under the act of June 1, 1896, relating to married women, a married woman owning shares of stock in an unincorporated joint stock company organized and doing business in this District, may be held liable as a partner equally with other stockholders.
5. A married woman is, however, incompetent to become a member with her husband in a partnership such as the one in question, in the absence of a statutory enactment clearly conferring upon her the power so to do; and no such power is conferred by the act of June 1, 1896.
6. *Held*, therefore, that a married woman, whose husband was also the holder of shares of stock in such company, could not be held liable, on failure of the bank, to a person depositing money with it.

No. 1466. Decided May 2, 1905.

APPEAL by plaintiffs from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,967, entered upon a verdict directed by the court in an action against alleged stockholders of an unincorporated joint stock company. Affirmed.

Mr. Mason N. Richardson, *Mr. A. A. Birney*, and *Mr. W. H. Richards* for the appellants.

Mr. J. J. Darlington, *Mr. Arthur Peter*, and *Mr. John B. Larner* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal by the appellants, who were the plaintiffs below, from a judgment in favor of the appellees entered in pursuance of a verdict found under the instructions of the court. Charles F. Murray, in November, 1901, deposited $2,880 in the Capital Savings Bank. This bank, organized in the District of Columbia in 1888, was an unincorporated joint stock company, carrying on its business under written articles of agreement signed by its stockholders. It failed in November, 1902, and receivers of its assets were appointed January, 1903. The suit was brought originally against several of its alleged stockholders, and included among the number were these appellees. As the defenses interposed on behalf of the appellees are different, they will be separately considered.

1. In October, 1892, the appellee, John A. Francis, purchased five shares of the bank stock. On November 1, 1898, he sent to the company the following notice of withdrawal:

"Nov. 1st, 1898.

To the Directors and Stockholders Capital Savings Bank.

Gentlemen: Permit me to hereby notify you of my withdrawal as a stockholder from the Capital Savings Bank.

You will please forward to me, at your earliest convenience, the amount which my five shares of stock are worth at this date.

Regretting the circumstances that compel me to withdraw, I am,

Respectfully yours, JOHN R. FRANCIS."

Article 12, of the Articles of Association providing for withdrawals, is as follows:

"Any member of the company may withdraw therefrom, by giving thirty (30) days' notice, and settlement shall be made with him in the manner hereinafter provided for. But the company reserves the right to postpone the payment of what may be due him from the company for ninety days after the date of filing of such notice of withdrawal."

Receiving no reply to his letter in April or May, 1899, he sold his stock to one Tyson and demanded that the board of directors transfer the shares to Tyson. Obtaining no satisfaction, on October 9, 1899, he sent the following letter:

"Washington, D. C., Oct. 9, 1899.

To the Board of Directors and Stockholders of the Capital Savings Bank.

Gentlemen: Some months have passed since I made an application for the transfer of my stock to Mr. Henry C. Tyson, to whom it was sold. Up to the present time I have received neither anything definite as to your action in the matter or the return of certificates to Mr. Tyson or myself.

I again apply, hereby, for a properly certified transfer of stock and a return of certificates.

Yours respectfully,

JOHN R. FRANCIS."

A few days later he addressed a communication to the directors and stockholders of the bank, stating that he declined the appointment to a directorship in the bank, as he was not a stockholder, and requested that his name be cancelled from the list of officers. At the same time he again called attention to his desire for a proper transfer of his stock, and stated that it was the third time that he had made such application. He never was an officer or director of the bank, nor in any way took part in its management, nor ever attended any of the meetings of the stockholders or directors, and received no dividends on his stock after November 1, 1898, and had no deposit account with it.

There is no evidence to show that Murray, when he made the deposit to recover which this suit is brought, had any knowledge that Francis was or ever had been connected in any way with the bank, although the record shows that an offer was made to show that at a trial of a case in the Supreme Court of the District of Columbia, in 1895, the articles of agreement of the bank, and the names of the signers, including that of Francis, were read in evidence. This evidence, as stated, was for the purpose of showing that it was generally known in the city of Washington at that time that Francis was a member of the company. The testimony was ruled out by the presiding judge, and properly so, we think. The trial occurred

Digitized by Google

six years before Murray made his deposit, and three years before Francis withdrew as a member of the association.

Upon the above state of facts Francis' liability for the debts of the bank turns upon the question whether he was a stockholder and member of the partnership at the time of its failure, for there can be no question but that this joint stock company, organized and carrying on its business within the District of Columbia, was in law a partnership and its members each liable for all of its debts. It is equally true, we think, that Francis, so far as the other stockholders were concerned, ceased to be a partner in the fall of 1898. Nothing he did after that date reinvested him with the duties or obligations of a partner. He complied with the articles of agreement in withdrawing from the company, and from the mere fact of being unable to obtain from the company the amount due him for his shares, he was justified in selling them to a third party. If the partnership refused to recognize the purchaser as a member of the company, as undoubtedly they had a right to do, the purchaser might have looked to Francis for any injury caused him; but the fact that the company refused, if it did, to accept Tyson as a member would not result in continuing Francis as a member against his will and in face of the notice of November 1, 1898. We think that Francis did all that was necessary for him to do to sever his relations with the company. We do not think that he owed any further duty to his fellow members or to future depositors. It does not appear that the articles of agreement, or the names of the members of the company were published in any newspaper or filed in any public office, as required by the laws of many States relative to ordinary or special partnerships. Had it been shown that Murray made the deposit with knowledge that Francis had once been a stockholder, then a different question might be presented than the one we are called upon to decide.

We have examined the authorities cited by counsel for both parties, and there seems to be the usual conflict ordinarily found in the decisions of the various State courts. It is, in our opinion, unnecessary to consider them and decide which line of cases give the best reasons for the conclusions arrived at. We consider the decision of the Supreme Court, in Thompson v. First National Bank of Toledo, 111 U. S. 529, to be controlling. In the opinion in that case the authorities, both English and State, are exhaustively reviewed. In that case the court below had refused to instruct the jury that if Thompson was not, in fact, a member of the partnership, the plaintiff could not recover unless it was shown by the testimony that he had knowingly allowed himself to be held out as a partner and knowledge of this plaintiff had during its transaction with the partnership. The court said:

"A person who is not in fact a partner, who has no interest in the business of the partnership and does not share in its profits and is sought to be charged for its debts because of having held himself out, or permitting himself to be held out, as a partner, can not be made liable upon contracts of the partnership except with those who have contracted with the partnership upon the faith of such holding out. In such a case, the only ground of charging him as a partner is that, by his conduct in holding himself out as a partner, he has induced persons dealing with the partnership to believe him to be a partner, and, by reason of such belief, to give credit to the partnership. As his liability rests solely upon the ground that he can not be permitted to deny a participation which, though not existing in fact, he has asserted or permitted to appear to exist, there is no reason why a creditor of the partnership, who has neither known of nor acted upon the assertion or permission, should hold as a partner one who never was in fact, and whom he never understood or supposed to be, a partner, at the time of dealing with and giving credit to the partnership."

We think the court below was right in instructing the jury that upon the whole testimony their verdict must be in favor of the defendant Francis.

2. As to the appellee, Anna M. Johnson, the record discloses that she was a married woman at the time of the trial, and had been for more than twenty-five years the wife of one of the codefendants, Jerome A. Johnson, and that as early as July, 1892, her husband gave her two shares of stock of the Capital Savings Bank. An account had been kept in her name in the bank, which showed that certain dividends had been applied to her account, the last one on July 16, 1896. She testified that she did not know how the account stood when the bank closed, as all of the business was transacted through her husband, and that she had nothing to do with it; that she never had a pass book of the bank, and that when dividends were declared upon the shares of bank stock her husband would speak to her about it; that some years before giving her testimony, which was in July, 1904, she had signed checks at her husband's request so that he could draw the dividends; that she never gave any authority to her husband to take the stock for her; that she had nothing to do with the bank; that her husband would give her checks to sign, and that she did not know what became of the money. In July, 1902, she transferred the stock back to her husband, with all the things he had given her, as she was then a sick woman, and that if anything happened to her she wanted it to go back to his people. The articles of agreement which were read in evidence disclose the name of Annie M. Johnson as one of those signing the articles. There is no question raised as to this being the name of the appellee. Upon this state of facts the court below instructed the jury to return a verdict in her favor.

Three questions are presented for our consideration. The first raises the question whether the ownership by a married woman of one or more shares of stock in a joint stock company is the carrying on of a trade, business, or occupation by her within the terms and meaning of the act of June 1, 1896, commonly called "The Married Woman's Act." The second question is, whether a wife can be a member with her husband in such a partnership, and, third, whether the evidence is sufficient to connect her with the association or its business

Digitized by Google

subsequent to June 1, 1896, or to charge her with liability for its obligation.

Section 3 of the act of June 1, 1896, under which it is claimed that Mrs. Johnson is chargeable, is as follows:

"That any married woman may carry on any trade or business, occupation, or profession by herself, or jointly with others, and perform any labor or services on her sole and separate account, and the earnings of any married woman from her trade, business, profession, occupation, labor, or services shall be her sole and separate property, and may be used and invested by her in her own name."

As we have heretofore stated, it is our opinion that a joint stock association, organized and carrying on business within the District of Columbia, is a partnership and being a partnership we see no good reason why a married woman, if she can enter into a partnership under the act of 1896, can not hold shares of stock in a joint stock company and make herself liable to the extent that other shareholders are. The section above quoted is broad and a fair construction of its terms permits a married woman to become a member of a partnership. It states that she "may carry on any trade or business, occupation, or profession by herself, or jointly with others." We do not think the act is to be so limited that a married woman, in order to carry on a trade, business, or occupation in conjunction with others, need necessarily perform labor or render services in order to render her liable, as to third parties, as a partner. It must be borne in mind that there is no statute in the District of Columbia providing for the formation of joint stock companies, as in many of the States, which results to their being very analogous to corporations. A stockholder in an unincorporated joint stock company is a partner and the liability and duties of one so interested differs very materially from that of a holder of stock in any incorporated company.

The second question is one not free from doubt. The conflict of decisions is very marked. The statutes adopted in England and the various States of this country differ materially in terms, and, as the decisions are based upon such statutes, we would naturally look for decisions apparently conflicting, although most of them can be reconciled when considered in the light of the special statute which is the foundation of the proceeding. In Massachusetts a husband and wife can not enter into a partnership contract, although they may do so with others. Bowker v. Bradford, 140 Mass. 521. In Michigan the same is true. Artman v. Ferguson, 73 Mich. 146. In New York there was a conflict of decisions between the Court of Appeals and what was known as the Second Division, the latter being a court composed of judges of the Supreme Court, delegated to assist the Court of Appeals in disposing of a large arrearage of business. In Hendricks v. Isaacs, 117 N. Y. 411, the Court of Appeals, by unanimous decision of its seven judges, held that a married woman at that time was not permitted to make a binding contract with her husband, while the Second Division, by a vote of four to three, in Suau v. Caffe, 122 N. Y. 308, held that a married woman could not be a copartner with her husband. Following these conflicting decisions, the statute relating to married women was amended in 1892 so as to provide that a married woman might contract with her husband or any other person as though she were unmarried, except that the husband and wife were prohibited from contracting that the married relations should be altered or dissolved, or to relieve the husband from his liability to support his wife. Chap. 594, N. Y. Statutes, 1892. In several of the States married women are allowed to enter into partnerships with their husbands and to make contracts with them. Hoagland v. Henderson, 119 Iowa, 720; Lane v. Bishop, 65 Vt. 575. The text writers, however, agree that the weight of authority goes to show that husband and wife may not be members of the one partnership. One writer thus states the reasons for the rule:

"The incapacity is not one that concerns the wife only, and hence it remains notwithstanding such laws, unless, indeed, they expressly declare that the husband and wife may contract with each other generally. The disability is one entirely outside of the common law doctrine of the feme covert not being sui juris, and therefore is not removed by statutes intended to merely change the common law in that respect. The point upon which the disability rests is the legal status of husband and wife, who, in contemplation of law, are one person, no individual being able to contract with himself." George on Partnership, p. 14.

While the tendency of legislation has been to remove the disabilities of married women, we think, in view of all the authorities, that such statutes removing such disabilities should not be construed so broadly as to permit a partnership between husband and wife, unless the statute expressly gives the husband and wife power to contract with each other generally, we therefore conclude that the appellee, Anna M. Johnson, could not become a member with her husband of a partnership such as the one in question. Any doubt we might have on the subject we would feel constrained to resolve in her favor in view of the facts disclosed by the record. Her husband signed her name to the articles of association without, so far as appears, her knowledge or authority; any benefits resulting from the ownership of the two shares of stock were received by him, and she is not shown to have in any way participated in the business of the bank. While these facts, standing by themselves, would not be sufficient to give her immunity in view of the fact that she knew that her husband had transferred the shares to her, and, at his direction, she signed checks, which facts were sufficient to apprise her that, at least, her husband was using her name, yet it must be remembered that the shares were transferred to her prior to the passage of the act of 1896, and at a time while she was admittedly disqualified from becoming a member of such partnership. While it is true that the account shows that on July 16, 1896, a dividend of $10 was placed to her credit, it is not shown that she had any knowledge of this fact, and, therefore, it can not be considered a ratification; neither, under the circumstances, can there be held to be a ratification by reason of her permitting the shares to stand in her name, she not being shown to have had possession of

Digitized by Google

them. All the circumstances tend to intensify the correctness of our conclusion that a married woman should be held to be incompetent to become a member with her husband in such a partnership as the one in question in the absence of a statutory enactment clearly and positively conferring upon her the power so to do.

On the whole, we conclude that none of the assignment of errors set forth any error which would warrant us in reversing the judgment of the lower court, either as to the appellee, John R. Francis, or his coappellee, Anna M. Johnson. It follows that the verdict for the appellees was properly directed, and that the judgment in favor of the appellees should be affirmed, with costs.

Affirmed.

J. HARRY BYRAM, JR., APPELLANT,

v.

THE UNITED STATES.

UNITED STATES MAILS; DECOY LETTER; EMBEZZLEMENT BY MAIL CARRIER.

1. It makes no difference with respect to the duty of a mail carrier, when a letter comes into his possession in the course of his official employment, whether it be genuine, or a decoy, or have a fictitious address. The opening, detention, destruction, or embezzlement of the contents of either kind of letter is equally punishable under sections 5467 and 5468 R. S.
2. And the fact that in addition to being a decoy letter prepared in the same office, it bore the pretended post-mark of a fictitious office, does not affect the question of the guilt of the defendant.

No. 1528. Decided May 23, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding a Criminal Court, Crim., No. 23,558, entered upon a verdict finding him guilty as charged in the indictment. Affirmed.

Mr. A. A. Lipscomb and *Mr. G. C. Meigs* for the appellant.

Mr. Morgan H. Beach and *Mr. J. S. Easby-Smith* for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, J. Harry Byram, jr., was a mail carrier employed in the postoffice of the city of Washington on or before November 19, 1902. He appeals from a conviction and sentence under an indictment which charged him, in three counts, with: (1) On that date unlawfully detaining and opening a letter that came into his possession for carriage and delivery; (2) with secreting, embezzling, and destroying the same letter; (3) with stealing a certain one dollar bill enclosed therein.

The bill of exceptions reserved on the trial reads as follows:

"Be it remembered that on the trial of this cause, the United States to maintain the issue joined on the plea of not guilty of the defendant, offered evidence tending to prove that the defendant was a letter carrier of the United States delivering mail in the District of Columbia, and that the letter described in the indictment was written by an employee of the Postoffice Department, in the Postoffice Department building in Washington, in the presence of a fellow employee, and was addressed to Col. O. C. Sabin, in Washington, D. C., and was signed with a fictitious name, and that the letter was dated at Hutchinson, Kentucky, and placed with a marked dollar in an envelope stamped and addressed to Col. O. C. Sabin, in Washington, D. C., and that said letter was then postmarked Hutchinson, Kentucky, and was by the said employee, who had prepared it, delivered to the superintendent of delivery in the city postoffice at Washington, D. C., and by the latter given to the foreman of carriers employed in the postoffice at Washington, D. C., and by the latter placed in one of the distributing boxes regularly used by carriers in the ordinary course of the delivery of United States mail, and so used by the defendant for the distribution of mail to be delivered by him, from which box the defendant was seen to take the letter as if to deliver the same; that said letter was not written by the person purporting to have signed the same, nor written in Hutchinson, Kentucky, nor sent by mail from there, and was postmarked as received in Washington, D. C., November 19, 1902, though it was not so received from Hutchinson, Kentucky; that said letter was not received by Colonel Sabin, to whom it was addressed, but was destroyed by the defendant and the marked dollar placed therein by said agent was, in the city of Washington, taken by the defendant from said letter while in his custody; that said letter was not deposited in Kentucky in the usual way for delivery in said city of Washington, and thereupon the Government rested its case.

"Whereupon the defendant asked the court to instruct the jury that under these circumstances the said paper purporting to be a letter was not such a letter contemplated under sections 5467 and 5468 of the Revised Statutes of the United States—intended to be conveyed by mail, and that the jury should acquit; which request was denied and the defendant then and there excepted."

The court did not err in refusing the requested instructions to the jury to acquit the defendant. It is settled law that it makes no difference with respect to the duty of the carrier, when a letter comes into his possession in the course of his official employment, whether it be genuine or a decoy, or have a fictitious address. The opening, detention, destruction, or the embezzlement of the contents of either kind of letter is equally punishable. Goode v. U. S., 159 U. S. 663, 671; 168 U. S. 632, 637; Scott v. U. S., 172 U. S. 343, 347.

Conceding this general rule in respect of decoy letters with or without fictitious addresses, that have been deposited in the mail for the sole purpose of attempting the detection of suspected criminality, it is contended, on behalf of the appellant, that the letter in this case constitutes an exception, because it bears the pretended post-mark of a fictitious postoffice.

It does not appear from the facts recited that there was no such postoffice as "Hutchinson, Kentucky." But assuming that such is the case in fact, and that we may take judicial notice of it, we fail to see any merit in the contention. The letter came into appellant's possession in the course of his official employment, and it was none the less his duty to deliver it, because,

Digitized by Google

in addition to being a decoy letter prepared in the same office, it bore the pretended postmark of a fictitious postoffice.

The judgment must be affirmed; and it is so ordered.

Affirmed.

Attachment—Ground of Attachment.—Where the ground of attachment is fraudulently contracting debts, if the material facts are stated in an uncertain manner, the attachment should be quashed. Elkins Nat. Bank v. Simmons (W Va.), 49 S. E. Rep. 893.

Master and Servant—Transitory Perils.—The fact that a place is rendered unsafe in the execution of details of the service does not of itself make it the duty of the master to be present in person or by representative to protect the servant.—Dill v. Marmon (Ind.), 73 N. E. Rep. 67.

Death—Limitations on Action for.—The provision in Lord Campbell's act of North Carolina (Code N. C. sec. 1498) that a failure to commence an action of wrongful death in one year should extinguish the right conferred by the statute applies to an action under the act brought in South Carolina.—Dennis v. Atlantic Coast Line R. R. (S. Car.), 49 S. E. Rep. 869.

Death—Master's Liability for Negligence of Driver.—In an action for the death of plaintiff's decedent by being run over by a team driven by defendant's servant, evidence held insufficient to support a verdict for the plaintiff.—Brennan v. Standard Oil Co. (Mass.), 73 N. E. Rep. 472.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

In the Supreme Court of the District of Columbia.
Sarah E. Frankland et al. v. Richard Frankland.
Equity, No. 25,045.

George C. Aukam, trustee, having reported to the court the sale of real estate known as part of lot 11 in square 403 in the city of Washington, District of Columbia, with the improvements thereon, being premises number 916 8th street northwest, in said city, and being the real estate mentioned and described in the bill of complaint filed in the above entitled cause, to Robert V. White for the sum of five thousand and thirty dollars ($5,030.00), it is by the court, this 14th day of July, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary thereof be shown in this court on or before the **20th day of August, 1905**; provided a copy of this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

---

Legal Notices.

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold lots one hundred and fourteen (114) to one hundred and twenty (120), both inclusive, in square five hundred and fifty-one (551), being Nos. 105 to 107 Reaves Court, to Cynthia E. Dowell for fifty-six hundred dollars ($5,600), cash, it is by the court this 18th day of July, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **18th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

---

Fountain Peyton, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ida Larkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. MARY THOMAS, 1107 ½ st. Court N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,044. Administration. 29-3t

---

Nelson Wilson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Massachusetts, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Otis B. Bullard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. HENRY M. CUTLER, Holliston, Mass. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,965. Administration. 29-3t

---

Victor H. Wallace, Solicitor
In the Supreme Court of the District of Columbia.
Inez L. Rosenbaum v. Richard W. Rosenbaum and Rose Illman. Equity. No. 25,131.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 12th day of July, A. D. 1905, ordered that the defendants, **Richard W. Rosenbaum and Rose Illman**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law Reporter and The Washington Times. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

---

C. Clinton James, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John H. Richardson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,061. Administration. 29-3t

Digitized by Google

Legal Notices

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Luella H. Bush**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. CLARA R. BUSH, 1537 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,046. Administration. 29-3t

---

Edward S. Moores, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ebenezer W. Patton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. JOHN R. BERG, 319 F st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,912. Administration. 29-3t

---

R. R. Horner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of David Lee, Deceased.

No. 13,080. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia I. Davis, it is ordered this 17th day of July, A. D. 1905, that notice be and hereby is given to **all the heirs at law, unknown, and next of kin**, and all others claiming interest in his estate, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

In the Supreme Court of the District of Columbia.

Harry M. Packard, Complainant, v. William Brown et al., Defendants. No. 24,604. In Equity. Doc. 55.

Ralph P. Barnard, trustee, having reported to the court the sale of the real estate involved in the above entitled cause, and being, to wit, lot one (1) in block twenty-five (25) of John Sherman, trustee's, subdivision of part of "Mount Pleasant" and "Pleasant Plains," now known as Columbia Heights (with the exception of the east 26.84 feet front by the full depth thereof of the said lot taken by the District of Columbia in the extension of Eleventh street), as per plat of said subdivision as the same appears of record in the office of the surveyor for said District, in book Governor Shepherd's, at page 137, said lot being unimproved, to Ernest L. Schmidt for the sum of eleven hundred dollars ($1,100.00), and the purchaser having tendered himself ready to comply with the terms of sale. It is by the court, this 17th day of July, A. D. 1905, ordered that upon compliance with the terms of sale, the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **17th day of August, 1905.** Provided a copy of this order be published once a week for three successive weeks before said day in The Washington Law Reporter. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Legal Notices.

H. Anton Heitmuller, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charlotte Hasselbusch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. WM. HASSELBUSCH, 20 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,048. Administration. 29-3t

---

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Benjamin T. Rhodes, Deceased.

No. 12,979. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Josephine Rhodes, it is ordered this 18th day of July, A. D. 1905, that notice be and hereby is given to **Alice I. Williams**, of Deruyter, Madison Co., New York, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

J. Clarence Price, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In Re the Estate of Agnes M. Beuchert, Deceased.

No. 12,867.

Upon consideration of the report of John A. Ruppert and Lena Beuchert, executor and executrix, respectively, of said estate, stating that they sold at public auction sublot one hundred and twenty-six (126), in square eight hundred and sixty-one (861), in the city of Washington, District of Columbia, to Zula H. and Richard W. Burkhart for the sum of three thousand six hundred and twenty-five ($3,625.00) dollars, and also that they sold sublot numbered five (5), in square numbered nine hundred (900), in said city, to Mary Buhler for the sum of three thousand four hundred and fifty ($3,450.00) dollars, it is, by the court, this 18th day of July, 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

---

Malcolm Hufty, Solicitor

In the Supreme Court of the District of Columbia.

Lawrence Hufty, Complainant, v. The Unknown Heirs, Devisees, or Alienees of John Law, Defendants. Equity. No. 25,506.

The object of this suit is to declare the title of the complainant to original lot one (1), in square seven hundred and sixty-eight (768), in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of complainant, by Malcolm Hufty, his solicitor, it is, by the court, this 19th day of July, 1905, ordered that the defendants, **the unknown heirs, devisees, or alienees of John Law**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court, otherwise this cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Digitized by Google

Legal Notices.

A. B. Duvall and A. Leftwich Sinclair, Attorneys

In the Supreme Court of the District of Columbia,
Holding a District Court.

In re the Opening of an Alley through part of Block 12, Meridian Hill, and part of Block 8, Washington Heights, in the District of Columbia. District Court. No. 668.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An act to amend chapter fifty-five of an act entitled 'An act to establish a Code of Law for the District of Columbia,'" have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley through part of block numbered 12, Meridian Hill, and part of block numbered 8, Washington Heights, in the District of Columbia, as shown on a plat or map prepared by the surveyor of the District of Columbia and filed with said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia, to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in the aforesaid act of Congress. It is by the court, this 18th day of July, A. D, 1905, ordered that all persons having any interest in these proceedings be and they are hereby warned and commanded to appear in this court on or before the **31st day of July, A. D. 1905, at 10 o'clock A. M.**, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be impaneled and sworn herein. And it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 31st day of July, A. D. 1905. It is further ordered that a copy of this notice and order be served by the United States marshal for said District, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal, or his deputies, within the District of Columbia, before the said 31st day of July, A. D. 1905. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 29-1t

---

Sidney F. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna J. King**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. A. VIRGINIA CHESSMAN, 1829 N. Gratz st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,926. Administration. 29-3t

---

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.

John Shrughrue et al., Complainants, v. Rudolph Pfeil et al., Defendants. Equity. No. 25,894.

On motion of complainants, by Lester & Price, their attorneys, it is, this 14th day of July, 1905, ordered that the defendant, **Rudolph Pfeil**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. The object of this suit is to have appointed trustees in the place and stead of Henry Jordan and John W. Schaefer, both deceased, to execute the powers created and vested in said deceased trustees by a certain deed of trust, recorded in liber 1581, folio 410, of the land records of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

Legal Notices.

F. L. Siddons, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Special Term for Equity Business.

Elizabeth B. Hallman v. Ellwood L. Hallman and Emma La Rue, Alias Emma Harvey. Equity Number 25,465. Docket 56.

ORDER OF PUBLICATION.

The object of this suit is to procure a dissolution of the bonds of marriage existing between the complainant and defendant Ellwood L. Hallman on the ground of alleged adultery by said defendant. On motion of the complainant, it is this 19th day of July, A. D. 1905, ordered that the defendants, **Ellwood L. Hallman and Emma La Rue, alias Emma Harvey**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, a newspaper published in the city of Washington, before said fortieth day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

---

SECOND INSERTION.

Sam'l Maddox, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Jesse Brown**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 31st day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. H. ROZIER DULANY, 1320 F st. N. W., by Sam'l Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,304 Administration. 28-3

L. Cabell Williamson, Attorney

In the Supreme Court of the District of Columbia,
Holding Probate Court.

In the Matter of the Estate of Ira A. Stafford, Deceased. Adm. No. 11,854.

Upon consideration of the reports herein filed by Daniel H. Safford and Albert P. Baldwin, executors of said estate, it is this 12th day of July, A. D. 1905, ordered that the sales made and reported by said executors of lot 153 in B. F. Gilbert's subdivision of square 675, house being known as 43 Myrtle street N. E., to H. C. Hile for Theresa O'Brien for the sum of two thousand dollars ($2,000); lots 154, 155, 156 in B. F. Gilbert's subdivision of square 675, houses being known as 45, 47, 49 Myrtle street, respectively, to James A. Cahill for the sum of one thousand nine hundred dollars ($1,900) each; lot 150 in D. L. Morrison's et al. subdivision of part of square 365, house being known as 1533 Columbia street N. W., to John White for the sum of two thousand eight hundred fifty dollars ($2,850); the south 9 feet 8 inches front on 8th street by full depth of lot 18 and the north 5 feet 4 inches front on 8th street by full depth of lot 19 in H. Crittenden's subdivision of square 398, house being known as 1430 8th street N. W., to John White for the sum of three thousand seven hundred twenty-five dollars ($3,725); the remainder interest in lot 164 subdivision of square 675, subject to certain alley rights, house being known as 65 Myrtle st. N. E., to Edith M. Cleland Carey for the sum of one thousand dollars ($1,000); and the remainder interest in lot 50 in William T. Davidson's subdivision of part of block 11, Bloomingdale, subject to certain covenants, house being known as — Quincy street N. W., to Edith M. Cleland Carey for the sum of two thousand dollars ($2,000), be and every of said sales is hereby ratified and confirmed, unless cause to the contrary be shown to this court on or before the **12th day of August, A. D. 1905**. Provided a copy of this order be published once a week for two successive weeks occurring before said day in The Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 28-2t

Digitized by Google

Legal Notices.

F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Patrick Fealy v. Anna Dore et al.

Equity. No. 25,509.

The object of this suit is the partition by sale of lot numbered thirty-three (33) in George Callaghan's subdivision of lots seventeen (17) and eighteen (18) in L. L. Chapman's subdivision of square numbered three hundred and thirty-five (335) as per plat in book 12, page 182, of the records of the surveyor's office in the District of Columbia. On motion of the complainant it is this 7th day of June, A. D. 1905, ordered that the defendants, **Timothy Fealy, Ellen Fealy, Johannah Fealy, Mary Columbus, Dennis Pierce Fealy, Thomas Pierce Fealy, Daniel Pierce Fealy, David Leahy, Mollie Jubain, Johannah Mc. Grath, Nellie Cahill, Thomas Fealy, Catherine Fealy, Mary O'Connor, James D. Leahy, Catherine Leahy, Ellen Collins, Johannah Hartnett, Edward O'Connell, and Patrick O'Connell,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 28-3t

---

F. Sprigg Perry, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily V. Sproston,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. WILLIAM G. SPROSTON, Hotel Atlamont, Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,984. Administration. 28-3t

---

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Martha J. Coston,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 4th day of August, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Wood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,084. Administration. 28-3t

---

John Selden, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Edes,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of July, A. D. 1906,** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1905. HENRY H. FLATHER, Riggs Natl. Bank; J. HUBLEY ASHTON, Pacific Building; THOMAS HYDE, 1537 28th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,883. Administration. 28-3t

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Henry Klinge,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of July, 1905. CATHERINE KLINGE, 257 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,031. Administration. 28-3t

---

Chas. W. Clagett, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Patrick Mann,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. ROBERT E. MANN, 207 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,040. Admn. 28-3t

---

J. B. Larner, Solicitor

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

John Welsh, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Andrew Link, Deceased, Defendants. Equity. No. 25,428.

The object of this suit is to quiet the title of the complainant to lot numbered thirty-three (33) in Andrew J. Miller's subdivision of lots in square numbered eighty-four (84), as per plat recorded in the office of the surveyor of the District of Columbia, in liber 20 at folio 48. Upon motion of the complainant, by his solicitor, it is this 12th day of July, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Andrew Link, deceased, cause their appearance to be entered herein on or before the first rule day of **September, 1905,** otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based on the bill filed herein, that further publication is unnecessary. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-4t

---

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.

Minna Schafer v. the Unknown Heirs, Devisees, and Alienees of Charles Wayman.

In Equity. No. 25,470.

The object of this suit is to establish of record the title in fee simple by adverse possession of the complainant to all of original lot eight, in square one hundred and ninety-six, in the city of Washington, in the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order, which is to be published twice a month for said period of three months in The Washington Law Reporter and the Washington Post, otherwise the cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. jul 14, 21; aug 11, 18; sept 8, 15.

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W

Digitized by Google

Legal Notices.

W. C. Prentiss, Solicitor

In the Supreme Court of the District of Columbia.
William H. Saunders et al. v. William Holmead et al.
Equity. No. 23,552. Doc. 53.

Upon consideration of the seventh report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating they have received from Anna E. Larigey an offer of three thousand five hundred dollars ($3,500.00) for the east twenty (20) feet front by depth thereof of lot numbered thirty-six (36), of Saunders and Galliher, trustees' subdivision, and all of lots numbered sixteen (16), twenty-nine (29), thirty (30), and the east twenty (20) feet front by the depth thereof of lot numbered twenty-eight (28), in the Washington Loan and Trust Company, trustees' subdivision of block numbered thirty-one (31), in "Petworth addition to the city of Washington," District of Columbia, all unimproved; and from the said Anna E. Larigey an offer of eight hundred dollars ($800.00) for all of lot numbered thirty-one (31), in the last-mentioned subdivision, unimproved, both of said amounts payable one-third (⅓) cash and the balance in one (1) and two (2) years with interest at six (6) per centum per annum, payable semi-annually, secured by deeds of trust on the property purchased, or all cash at the option of the purchaser, it is this 13th day of July, 1905, ordered, adjudged, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon compliance with the terms of sale, unless cause to the contrary be shown on or before the 7th day of August, 1905. Provided a copy of this order be published in The Washington Law Reporter and The Washington Evening Star once a week for three (3) successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-3t

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.
Phillip T. Hall v. The unknown heirs, devisees, and alienees of Charles A. Beatty, John M. Beatty, Mary F. Beatty, Randle H. C. Beatty, Thomas J. Beatty, Violetta Beatty, Sophia M. Beatty, Francis G. Beatty, Robert M. Beatty, Charles F. Beatty, George Gordon, Stephen West, John Davidson, Geo. F. Hawkins, Anne Campbell, Edward Crowley, John Threlkeld, William King, Sr.
In Equity. No. 25,442.

The object of this suit is to establish of record the title in fee simple of the complainant to all of lots numbered 311, 312, 313, and 314 of Phillip T. Hall's subdivision of parts of lots 306 and 270 in square numbered 1300 in the city of Washington, District of Columbia, formerly square 130 in that part of the said city of Washington formerly known as Georgetown, as per plat recorded in book 28, page 14, in the surveyor's office in the District of Columbia; also part of lot 306, in Mary A. Weaver et al.'s subdivision of parts of lots 269, 270, and 271, in said square 1300, as per plat recorded in book Georgetown No. 2, page 14, in said surveyor's office, and parts of lots 269 and 270 in said square 1300, said parts of said lots 306, 269, and 270 being fully described in the bill in this cause; also all of lot 275 in said square. On motion of the complainant, it is this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, otherwise the cause will be proceeded with as in case of default, sufficient cause having been shown for dispensing with a longer period of publication. THOS. H. ANDERSON, Justice. True copy. Test. J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. 28-3t

L. Cabell Williamson and John A. Butler, Solicitors

In the Supreme Court of the District of Columbia.
Ethel Payne v. Herbert Payne, Ada Wood.
Equity No. 25,193.

The object of this suit is to secure a divorce on the ground of adultery. On motion of the petitioner by her solicitors, it is this 29th day of May, A. D. 1905, ordered that the co-respondent, **Ada Wood**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 28-3t

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Fanny Heidenheimer**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 31st day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1905. ELIAS HEIDENHEIMER, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,264. Administration. 28-3t

THIRD INSERTION.

Malcolm Hufty, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary F. Young**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1905. MALCOLM HUFTY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,002. Administration. 27-3t

Paul E. Johnson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John W. Post, otherwise known as John Williams**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. NELLIE POST, 611 3d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,989. Administration. 27-3t

J. A. Sweeney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Charles Ippolito, Deceased.
No. 12,968. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Benjamin F. Guy, it is ordered this 7th day of July, A. D. 1905, that notice be and hereby is given to **Raphael Ippolito, Orto Essoline, Joe Otito, and mother of Charles Ippolito**, whose name and address is unknown, but is supposed to live in Italy, and to all others concerned, to appear in said court on **Tuesday, the 8th day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 27-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Augustine Pavese**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. L. CABELL WILLIAMSON, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,029. Administration. 27-3t

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Martha A. Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1905. SIDNEY A. TAYLOR, 1015 3d st. N. W.; PHEOBE MILES, 818 4th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,986. Administration. 27-3t

Chas. F. Carusi, Solicitor

In the Supreme Court of the District of Columbia.
Annie E. Ward v. Henry C. Ward, Blanche Walker.
No. 25,355. Equity Docket No. 56.

The object of this suit is to obtain a divorce from the bond of marriage from the defendant, **Henry C. Ward**, on the ground of adultery. On motion of the complainant it is this 3d day of July, A. D. 1905, ordered that the defendant, **Blanche Walker**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Levi H. David, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna H. Stewart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1905. ANDREW STEWART, 1420 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,994. Administration. 27-3t

T. Percy Myers, Solicitor

In the Supreme Court of the District of Columbia.
Isabella Ricks v. Edward L. Edmonston et al.
In Equity, No. 24,716.

Upon consideration of the report of T. Percy Myers and Campbell Carrington, trustees, filed herein, stating that they have sold at public auction the east half of lot 23 in square 282, to Julius A. P. Dowling, Jr., as the agent for Mary A. Smith, for the sum of twenty-two hundred ($2,200) dollars, it is, by the court, this 6th day of July, A. D. 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of August, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 27-3t

Legal Notices.

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **James H. Hopkins**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 24th day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of July, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS, AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, 2d V.-President. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,285. Administration. 27-3t

E. Hilton Jackson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Julia M. Adams, Deceased.
No. 13,028. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Decatur Morgan, it is ordered this 30th day of June, A. D. 1905, that notice be and hereby is given to **Charles H. Adams, Carrie M. Adams, and Frank M. Adams**, and to all others concerned, to appear in said court on **Monday, the 10th day of August, 1905, at ten o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 27-3t

FOURTH INSERTION.

R. B. Behrends, Attorney

In the Supreme Court of the District of Columbia.
In Re Estate of J. K. Wilhelmina Kirchner, Deceased.
No. 8794.

It appearing to the court that the notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 13th day of April, 1898, purporting to be the last will and testament of J. K. Wilhelmina Kirchner, deceased, has been returned as to Frederick W. Boucher, Edward Boucher, and Rosa Mitchell "not to be found," it is, this 27th day of June, 1905, ordered that the issues heretofore framed in this case be, and they are hereby, set down for trial on the **10th day of October, 1905**, and that this order and the substance of said issues heretofore framed shall be published once a week for four weeks in The Washington Law Reporter, and twice a week for the same period in The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

ISSUES.

1. Was the said paper writing propounded as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, bearing date the 13th day of April, 1898, executed by her in due form of law? 2. Was the said J. K. Wilhelmina Kirchner, at the time of the execution of said paper writing, bearing date the 13th day of April, 1898, of sound mind, and capable of executing a valid deed or contract? 3. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured through the undue influence, importunities, suggestions, and persuasions of any person or persons? 4. Was the said paper writing, bearing date the 13th day of April, 1898, and offered for probate and record as the last will and testament of said J. K. Wilhelmina Kirchner, deceased, procured by the fraud, deceit, or misrepresentations practiced upon her by any person or persons? 26-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 30

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - - JULY 28, 1905

CONTENTS.

Editorial 465
The American Bar Association 466
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Winfield Scott Montgomery, appellant, v. Richard S. Brown et al 468
Sigmund A. Czarra, appellant, v. Board of Medical Supervisors of the District of Columbia 470
Christian J. Ubhoff, appellant, v. Clarence A. Brandenburg et al 473
Legal Notices 475

Judgments—Jurisdiction Over Garnishee Temporarily Within State—Notice to Principal Debtor.

In Harris v. Balk, decided by the Supreme Court of the United States, and reported in the Advance Sheets for June 15, 1905, the facts were as follows: Harris was a resident of North Carolina at the time of the commencement of the action in 1896, and prior to that time was indebted to Balk, also a resident of that State, in the sum of $180, which he had verbally promised to pay, but there was no written evidence of the obligation. In the same year one Epstein, a resident of Baltimore, asserted that Balk was indebted to him in more than $300. While Harris was temporarily in Baltimore, in August, 1896, Epstein caused to be issued out of a proper court in Baltimore a non-resident writ of attachment against Balk, attaching the debt due Balk from Harris, which writ was served on Harris by the sheriff, with a summons to appear in court on a day named. With that attachment a summons and declaration against Balk (as provided by the Maryland statute) were delivered to the sheriff and by him set up at the court house door. Harris left Baltimore and returned to North Carolina before the return day of the writ. He did not contest the garnishee process, but after his return made an affidavit on August 11, 1896, that he owed Balk $180, and stating that the amount had been attached by Epstein, and by his counsel consented to an order of condemnation against him as such garnishee for $180. Judgment was thereafter entered against the garnishee and in favor of Epstein for that amount, and thereafter Harris paid the amount to one Warren, an attorney of Epstein, in North Carolina. On August 11, 1896, Balk sued Harris before a justice of the peace in North Carolina to recover the $180. To this action, Harris pleaded in bar the recovery of the Maryland judgment and his payment thereof, contending that that judgment was valid in Maryland and therefore entitled to full faith and credit in the courts of North Carolina, and was conclusive against Balk in this action. The justice denied this contention and rendered judgment against Harris for the amount of his indebtedness to Balk and that judgment was affirmed by the Supreme Court of North Carolina. The ground of this judgment was that the Maryland court was without jurisdiction to attach or garnish the debt, because Harris was but temporarily in that State, and the situs of the debt was in North Carolina.

The Supreme Court of the United States, in an opinion by Mr. Justice Peckham (Justices Harlan and Day dissenting), reversed the judgment of the Supreme Court of North Carolina. In the course of the opinion the following points are decided:

1. The judgment of a State court, if that court had jurisdiction to render it, is entitled to the same full faith and credit in the courts of another State that it has in the State where rendered, as a valid domestic judgment.

2. The temporary presence of the garnishee within the State gives a court of that State jurisdiction to render judgment against him in the garnishment proceedings upon personal service of process within the State, if, during such temporary presence in the State, the principal debtor could have sued him there to recover the debt, and the laws of the State permit the garnishment of a debtor of the principal debtor.

3. The consent of a garnishee to a judgment impounding his debt to the principal debtor does not make the payment under the judgment voluntary, where he was absolutely without defense, so as to prevent him from pleading such payment in bar to an action on the debt.

4. The duty of the garnishee to give notice of the garnishment proceedings to the principal debtor is discharged by pleading the judgment therein in bar to an action on the debt while there then remained nearly a year in which the principal debtor might litigate the question of his liability in the court which rendered the judgment.

Deeds—Delivery.—Delivery of a deed by the grantor to a third person, not made with intent to part with the right to recall the deed, was insufficient to pass title. Spacy v. Ritter (Ill.), 73 N. E. Rep. 447.

Digitized by Google

The American Bar Association.

The twenty-eighth annual meeting of the association will be held at Narragansett Pier, Rhode Island, on Wednesday, Thursday, and Friday, August 23, 24, and 25, 1905. The sessions of the association will be at 10 o'clock a. m. and 8 o'clock p. m. on Wednesday and Thursday, and at 10 o'clock a. m. on Friday.

The sessions of the section of legal education will be held on Tuesday, Wednesday, and Friday, August 22, 23, and 25, at 3 o'clock p. m.

The sessions of the section of patent, trademark, and copyright law will be held on Wednesday and Friday at 3 o'clock p. m.

On Tuesday, August 22, at 8 o'clock p. m., there will be a meeting of the Association of American Law Schools.

On Tuesday, August 22, at 8 o'clock p. m. also, the second conference of the State Boards of Law Examiners will be held.

The fifteenth conference of Commissioners on Uniform State Laws will begin its sessions on Friday, August 18, at 10 o'clock a. m., being the week previous to the meeting of the American Bar Association.

All the meetings will be held at the New Mathewson Hotel.

PROGRAMME OF THE ASSOCIATION.

Wednesday Morning, 10 o'clock.

The president's address, by Henry St. George Tucker, of Lexington, Va., communicating the most noteworthy changes in statute law on points of general interest, made in the several States and by Congress during the preceding year.

Nomination and election of members. Election of the general council. Report of the secretary. Report of the treasurer. Report of the Executive Committee.

Wednesday Evening, 8 o'clock.

A paper by Thomas J. Kernan, of New Orleans, La. Discussion upon the subject of the paper read.

Thursday Morning, 10 o'clock.

The annual address, by Alfred Hemenway, of Boston, Mass.

Reports of standing committees (see report of 1904, page 939, giving a memorandum of subjects referred): On jurisprudence and law reform; on judicial administration and remedial procedure; on legal education and admissions to the bar; on commercial law; on international law; on grievances; on obituaries; on law reporting and digesting; on patent, trade-mark and copyright law; on uniform State laws; on insurance law.

Thursday Evening, 8 o'clock.

A paper by Richard L. Hand, of Elizabethtown, N. Y. Discussion upon the subject of the paper read.

Reports of special committees (see report of 1904, pages 939 and 940): On classification of the law; on Indian legislation; on penal laws and prison discipline; on Federal courts; on industrial property and international negotiation; on title to real estate; on Louisiana purchase exposition.

Friday Morning, 10 o'clock.

Nomination of officers. Unfinished business. Miscellaneous business. Election of officers.

The annual dinner will be given by the association to its members and delegates at the New Mathewson Hotel at 8 o'clock on Friday evening.

A parlor in the hotel will be open as a reception room for the use of members of the association and delegates during the meeting.

Members and delegates are particularly requested to register their names, as soon as convenient after their arrival, in the register of the association, which will be kept in this room in order that the list of those present may be complete.

The members of the general council will meet in the reception room at the hotel on Tuesday evening, August 22, at 9.30 o'clock.

The attention of the various standing committees is called to the provision of the by-laws by which such committees are required to meet every year, at such hour as their respective chairmen may appoint, on the day preceding the annual meeting, at the place where the same is to be held. All such committees will also meet at the reception room at the hotel at 9.30 o'clock on Tuesday evening, August 22, for further consultation.

The attention of committees is called to the following provisions of the by-laws:

"All committees may have their reports printed by the secretary before the annual meeting of the association; and any such report, containing any recommendation for action on the part of the association, shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. Such report shall be distributed by mail by the secretary to all the members of the association at least fifteen days before the annual meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved except upon the report of a committee."

It is desirable that all nominations of new members, as far as possible, should be submitted to the general council at its first session on Tuesday evening. The mode of nomination will be found below, and forms will be furnished by the secretary, if desired. Any nomination put in proper form and sent to the secretary before the meeting will be submitted to the general council at its first session.

The executive committee will act on any nominations for elections made under the last clause of Article IV, if sent to the secretary prior to August 1. Forms will be furnished on application.

HOTEL ACCOMMODATIONS.

The principal hotels are the New Mathewson, the Atlantic, the Atwood, and the Imperial. The first three are situated within a few rods of, and facing, the beach. The Imperial Hotel is situated just in the rear of the other three hotels mentioned. It is expected that all members who attend the meeting will be able to secure accommodations at the New Mathewson, the Atlantic, the Atwood, or the Imperial. These hotels are very near one another.

The New Mathewson is a new hotel and is pro-

Digitized by Google

vided with all the modern improvements. The rooms, over three hundred in number, are of various sizes, and many of them with private bath.

The Massasoit and Mattatoxit, the Revere and the Gladstone are smaller and less expensive summer hotels.

RAILROAD FACILITIES.

Narragansett Pier is on a branch railroad connecting with the New York, New Haven, and Hartford Railroad at Kingston, R. I. The distance from Boston to Narragansett Pier is about 75 miles, and there are seven available trains daily, taking about two and one-half hours. The distance from New York to Narragansett Pier is about 170 miles, and it may be reached conveniently by train leaving Grand Central Station, New York, at 10.02 a. m., arriving at 3.15 p. m., or at 1.01 p. m., arriving at 5.37 p. m. It may also be reached from New York by the Norwich line of steamers to New London, Conn., leaving New York at 6 p. m., reaching Narragansett Pier at 8.30 a. m.

No special railroad rates will be given to members of the American Bar Association, it having been heretofore found that the necessary number of members who would desire to arrive immediately before the meeting and return home immediately afterwards by the same route would not be sufficient to warrant the required guarantee for any particular territory.

The dues are $5 a year for members. Delegates who are not members pay no dues. There is no initiation fee. There are no additional dues for membership of a section.

In preparing for debate members are requested to bear in mind the by-law which provides that no person shall speak more than ten minutes at a time nor more than twice on one subject.

By order of the Executive Committee.

JOHN HINKLEY, Secretary,
215 North Charles Street, Baltimore, Md.

PROGRAMME OF THE SECTION OF LEGAL EDUCATION.

The sessions will be held on Tuesday, Wednesday, and Friday, August 22, 23, and 25, 1905, at the New Mathewson Hotel.

Tuesday Afternoon, 3 o'clock.

Address of the president of the Association of American Law Schools, Nathan Abbott, Dean of the Law School of the Leland Stanford, Jr., University.

A paper by James P. Hall, Dean of the University of Chicago Law School, on "Practice Work and Elective Studies in Law Schools."

Discussion of the papers presented.

Wednesday Afternoon, 3 o'clock.

Address of the chairman of the section of legal education, Lawrence Maxwell, Jr., of Cincinnati, Ohio.

One or more additional papers will be read.

Discussion of the papers presented.

Friday Afternoon, 3 o'clock.

Unfinished business.

CHARLES M. HEPBURN, Secretary,
307 Carlisle Building, Cincinnati, Ohio.

PROGRAMME OF THE SECTION OF PATENT, TRADEMARK, AND COPYRIGHT LAW.

The sessions will be held on Wednesday and Friday afternoons, at 3 o'clock, at the New Mathewson Hotel.

Address of the chairman, Robert S. Taylor, of Fort Wayne, Ind.

A paper by Joseph B. Church, of the District of Columbia, on "Needed Reforms in Interference Procedure."

A paper by Hon. Charles H. Duell, Justice of the Court of Appeals of the District of Columbia, entitled, "Are any Changes Desirable in Our Patent System?"

One or more additional papers will be read.

A discussion of the papers will follow.

MELVILLE CHURCH, Secretary,
McGill Building, Washington, D. C.

PROGRAMME OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS.

Sessions will be held on Tuesday, Wednesday, and Friday, August 22, 23, and 25, in connection with the section of legal education.

(See programme of Section of Legal Education).

On Tuesday, August 22, at 8 o'clock p. m., there will be a separate meeting of the Association of American Law Schools.

W. P. ROGERS, Secretary-Treasurer,
21 West Ninth St., Cincinnati, Ohio.

PROGRAMME OF THE NATIONAL CONFERENCE OF LAW EXAMINERS.

Sessions will be held on Tuesday, Wednesday, and Friday, August 22, 23, and 25, in connection with the Section of Legal Education.

(See programme of Section of Legal Education.)

On Tuesday, August 22, at 8 o'clock p. m., there will be a separate meeting of the Conference.

LUCIUS H. PERKINS, Secretary,
Lawrence, Kan.

CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The fifteenth conference will be held at the New Mathewson Hotel, beginning Friday, August 18, 1905, at 10 o'clock a. m.

The members of the American Bar Association Committee on Uniform State Laws, and all other members of the American Bar Association, are invited to participate in the discussion, examination, and preparation of uniform laws relating to sales, partnership, and warehouse receipts.

AMASA M. EATON, President,
Providence, R. I.
ALBERT E. HENSCHEL, Secretary,
11 Broadway, New York, N. Y.

Negligence—Defective Streets.—In order to show contributory negligence, both the commission of a negligent act and a connection of that act with the injury as a proximate cause thereof must concur.—Brewster v. Elizabeth City (N. Car.), 49 S. E. Rep. 885.

Digitized by Google

Court of Appeals of the District of Columbia.

WINFIELD SCOTT MONTGOMERY, APPELLANT,

v.

RICHARD H. BROWN ET AL.

WILLS, CONSTRUCTION OF; INTENT OF TESTATOR; PROVISION FOR WIDOW; ABSOLUTE BEQUEST OF PERSONAL PROPERTY.

1. The first and great rule in the exposition of wills, to which all others must bend, is that the intention of the testator, expressed therein, shall prevail, if consistent with the rules of law; and the whole will is to be taken together, and so construed as, if possible, to give effect to the whole.
2. A provision for the benefit of the wife of the testator should be construed liberally in her favor.
3. When an interest is given or an estate conveyed by one clause of an instrument it can not be cut down or taken away by raising a doubt from other clauses, but only by express words or by clear and undoubted implication.
4. Testator, by his will, gave to his wife his real estate during life, with power to mortgage it should her circumstances require. By a separate paragraph he bequeathed to her, without any limitation or qualifying clause, his life insurance and all other property not disposed of by the will. He then made specific bequests to two other persons, and in the concluding clause provided that on death of his wife all his property, real, personal, and mixed, should revert to his brother and his heirs. *Held*, construing the will, that the bequest to the wife of the life insurance gave her the absolute interest therein and not merely a life estate, and any portion of such insurance money remaining at the death of the wife passed to her personal representative and not to the brother of testator.

No. 1509. Decided May 2, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,060, in suit to construe a will. Affirmed.

Mr. C. C. Cole, *Mr. R. G. Donaldson*, and *Mr. S. R. Bond* for the appellant.

Mr. Henry E. Davis and *Mr. J. H. Smith* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal taken from a decree, entered in the court below, in favor of the appellees, who were the defendants below. The question involved in the suit was as to the proper construction and interpretation of a will executed by Henry P. Montgomery, deceased, a brother of the complainant. Should the will be construed according to the contention of the complainant, specific relief is asked relative to certain notes and securities.

The record discloses that Henry P. Montgomery, a resident of the District of Columbia, died April 26, 1899, leaving a will dated December 1, 1898. The will devised to Emma V. Montgomery, his wife, all his real estate during her life, with power to mortgage, should her circumstances become such as to justify it. Certain specific bequests were made, one of which was revoked by a codicil, which codicil also contained a bequest of certain other personal property. In addition thereto, the will contained two clauses which are the ones to be construed. They are as follows:

"I also bequeath to my wife, Emma V. Montgomery, my life insurance and all other property, not otherwise disposed of by this will." . . .

"At the death of my wife, Emma V. Montgomery, all my property, real, personal, and mixed, shall revert to my brother, Winfield Scott Montgomery, and his heirs forever."

Emma V. Montgomery and Winfield Scott Montgomery were appointed executors. The will was probated June, 1899, and the executors qualified. They collected the life insurance money, amounting to $5,000, which was taken by Emma V. Montgomery, who deposited $4,800 of the amount in her name, in certain Washington trust companies. Emma V. Montgomery died October 26, 1902, intestate, leaving as her heirs at law and next of kin the defendants, her brother and sister. Richard H. Brown, one of the appellees, was appointed administrator of the estate of Emma V. Montgomery, in December, 1902. The inventory and appraisal of her personal estate, as filed, disclosed that such estate amounted to about $7,000. Among the items were three notes amounting in the aggregate to $4,500, secured by deeds of trust, which are the notes asserted to have been bought with the life insurance money. It appears that the appellant, while Richard H. Brown's petition for appointment as administrator of the estate of Mrs. Montgomery was pending, filed an intervening petition asserting that these notes were purchased with the life insurance money, and that they, as well as all other personal property which Mrs. Montgomery received under the will of her husband, passed at her death to this appellant.

This state of facts presents for consideration two questions:

The first is as to whether the insurance money was invested in the notes referred to; and, while we agree with the court below in the finding that the notes were purchased with the money received from the life insurance, it is, in our opinion, of little consequence, for the reason that if Mrs. Montgomery only took a life interest in the insurance money, her estate would, in any event, be answerable for the full amount.

The second question is the important one, and that is as to whether Emma V. Montgomery's interest in the insurance money was absolute or only a life interest therein.

The general rule as to the construction of wills is, at this day, well established and is not open to question. It is the rule laid down in Smith v. Bell, 6 Pet. 68, where it is stated:

"The first and great rule in the exposition of wills, to which all others must bend, is that the intention of the testator, expressed in his will, shall prevail, provided it be consistent with the rules of law; and the whole will is to be taken together, and is to be construed so as to give effect, if it be possible, to the whole."

Turning now to the consideration of the will, we find that Henry P. Montgomery gave to his wife the real estate during her life, with power to mortgage should her circumstances become such as to justify it. The next paragraph, without any limitation or qualifying clause, bequeaths to her his life insurance and all other property not otherwise disposed of by his will. Standing by itself, this bequest is clear, and expresses in apt terms and without the slightest ambiguity, an absolute bequest of the life insurance money to the widow. Then the will sets forth two specific bequests, followed by the

Digitized by Google

clause which has led to this controversy. This clause provides that at the death of Emma V. Montgomery, the widow, all of the decedent's property, real, personal, and mixed, shall revert to his brother, Winfield Scott Montgomery, and his heirs forever. A reading of the will clearly shows that it was the intention of the testator to provide for his wife a home and, according to the measure of his means, an ample maintenance. To that end he gave not only a life interest in all of his real estate during her life, but gave her the power to mortgage the same should circumstances justify it. He also gave her his life insurance without any words of limitation. Had he intended to give her only a life interest in it, or only so much of it as might be necessary for her maintenance, it would have been natural for him to so state, and to have qualified the bequest as he had limited her interest in his real estate in the preceding clause of the will. As we have stated, the will disclosing that the intent of the testator was to make ample provision for his wife, the rule laid down by the Court of Appeals of New York, in Moffett v. Elmendorf, 152 N. Y. 475, that provisions for the benefit of the wife should be construed liberally in her favor, may be well invoked in the case at bar.

But it is insisted on behalf of the appellant that the clause providing for the reversion of all of the testator's property to him at the death of Emma V. Montgomery is clear, should be construed as it reads, and not in such a way as to deprive the testator's brother of the interest given him by the clause. There can be no question but that, notwithstanding the terms in one clause of the will denote an absolute estate, by a subsequent clause such an interest may be qualified by a limitation over, in a certain event, or that it may be cut down; but as the New York Court of Appeals, in Freeman v. Coit, 96 New York, 63, in recognizing such rule, said: "There is another rule of construction of equal force and not inconsistent with the one just stated, and that is that when an interest is given or an estate conveyed in one clause of an instrument it can not be cut down or taken away by raising a doubt from other clauses, but only by express words or by clear and undoubted implication," citing Thornhill v. Hall, 2 C. L and Fin. 22, and Roseboom v. Roseboom, 81 N. Y. 356. The reversion clause, in our opinion, is not so clear but that it requires construction and limitation. If the expression, "all of my property, real, personal, and mixed," is to be construed sufficiently broad to sweep within its terms all of the property held by the testator at his death, then it would apply with just as much force to the two specific bequests to Richard B. Peters and Musette Brooks as to the specific bequest of the life insurance to Emma V. Montgomery.

A construction as broad as that would, we think, be unwarranted, and yet it would be doing violence to the rule requiring a liberal construction of a provision for the benefit of the widow to hold that the reversion clause related to her specific bequest, and not to other specific bequests contained in the will. It is true that the bequest to Peters was revoked by the codicil, but that does not alter the principle. We think it a fair construction to say that the reversion clause was set forth broadly so as to embrace the testator's property, which was not specifically bequeathed, in whatsoever form that property might be at the time of the death of Mrs. Montgomery. For illustration, she was given power to mortgage the real estate, and if that power had been exercised only a short time before her death there undoubtedly would have been a considerable part of the amount of the mortgage money in her hands at the time of her death, which money would revert to Winfield Scott Montgomery under the reversion clause, as it would not had that clause only provided for the reversion of his real estate.

The learned justice in the court below, in reviewing the facts of the case and the law applicable thereto, said:

"In the case of Howard v. Carusi, 109 U. S. 725, involving a devise of real estate and bequest of personal property to the brother of the testator to be held, used, and enjoyed by him, his heirs, executors, administrators and assigns, forever, with the hope and trust, however, that he would not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance, and that, at his death, the same, or so much thereof as he should not have disposed of by devise or sale, should descend to the testator's three nieces, it was held by the Supreme Court of the United States that, inasmuch as the absolute power of disposal was given in express and unequivocal terms, or clearly and unmistakably implied, to the first taker, the remainder over was void. See, also, the cases of Holcomb v. Wright, 5 App. Cas. (D. C.) 76: 23 Law Rep. 24; Smith v. Bell, 6 Pet. (U. S.) 68; Brant v. Virginia Coal & Iron Co., 93 U. S. 326; Potter v. Couch, 141 U. S. 316, and Roberts v. Lewis, 153 U. S. 367.

"In the case at bar, the testator evidently intended that his widow should not be limited or embarassed in any way in respect of this insurance money which he wished her to have. It would be most unusual, indeed, for a testator in disposing of his life insurance policy, which he doubtless, and quite naturally, procured in order to insure support for his wife in the event of his own prior death, to say to his wife that he did not mean that she should use the insurance money, but only that she should invest it and use the income; and, in the absence of an express declaration by the testator that he intended such an unusual disposition, the court would hardly be justified in holding such to have been his intention.

"The clause of the will upon which the complainant relies, namely: 'At the death of my wife, Emma V. Montgomery, all of my property, real, personal, and mixed, shall revert to my brother, Winfield Scott Montgomery, and his heirs forever,' is in the nature, simply, of a residuary disposition. The clause was necessary in order to dispose of the fee to the real estate in which he had simply vested the widow with a life estate, but beyond this it is only to be treated as a general clause. The testator's first wish was to see to it that his wife should be properly cared for—and after that he looked directly to his brother. After his wife, whatever was to be disposed of he wanted to go to his brother; and, in order to ensure this, he

Digitized by Google

made use of the broad, generic, and comprehensive expression "all of my property, real, personal, and mixed," as best adapted to provide for all possible contingencies—and it is not improbable that he found this stereotyped expression in some printed form or draft of will, and regarded it as an approved residuary one with no special meaning to him, but simply adapted to carry out his general idea that, after his wife had thus been provided for, whatever of his estate remained undisposed of he wanted to go to his brother. And, under this clause, it would seem quite clear that not only would his brother take the fee to the real estate, but also that, had the testator's wife not survived the testator, all of the property, real, personal, and mixed, would have gone to the brother."

We agree with his views thus expressed and believe that the proper construction was placed upon the will by the trial court. No reversible error has been shown. It follows that the decree should be affirmed, with costs, and it is so ordered.

Affirmed.

SIGMUND A. CZARRA, APPELLANT,

v.

BOARD OF MEDICAL SUPERVISORS OF THE DISTRICT OF COLUMBIA.

PHYSICIANS; REVOCATION OF LICENSE FOR UNPROFESSIONAL CONDUCT; STATUTORY CONSTRUCTION.

1. When the legislature declares an offense in words of no determinate signification, or its language is so general and indefinite as that it may embrace within its comprehension not only acts commonly recognized as reprehensible, but others also which it is unreasonable to presume were intended to be made criminal, the courts, possessing no arbitrary discretion to discriminate between those which were and those which were not intended to be made unlawful, can do nothing else than declare the statute void for uncertainty.
2. The provision of the act of Congress of June 3, 1896 (29 Stat. 198), regulating the practice of medicine, etc., in the District of Columbia, authorizing the revocation by the board of medical supervisors, thereby created, of the license of a physician for "unprofessional or dishonorable conduct," but not defining the acts that will constitute such conduct, is too indefinite and uncertain to warrant a conviction upon a complaint charging the respondent with "unprofessional and dishonorable conduct."
3. An order of the board of medical supervisors revoking the license of a physician who had been found guilty under a complaint charging him with unprofessional and dishonorable conduct in distributing a pamphlet containing obscene, lewd, and lascivious matter, reversed.

No. 1512. Decided May 2, 1905.

APPEAL from an order of the Board of Medical Supervisors revoking the license of a physician for alleged unprofessional conduct. Reversed.

Mr. Mason N. Richardson for the appellant.

Mr. A. B. Duvall for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order of the board of medical supervisors of the District of Columbia, made January 24, 1905, revoking the license of Sigmund A. Czarra to practice medicine and surgery in said District because of his unprofessional and dishonorable conduct.

The act of Congress, approved June 3, 1896 (29 Stat. 198), is a general one regulating the practice of medicine and surgery, and the licensing of practitioners thereof in the District of Columbia. It creates three separate boards, each consisting of five members. One of these boards shall "be composed of five physicians in good standing adherents to the regular system of medical practice;" another of "adherents to the homeopathic system of medical practice," and the third of "adherents to the eclectic system of medical practice." Provision is made for the careful and impartial selection of the members of these several boards.

The board of medical supervisors consists of the presidents of the respective boards of examiners above mentioned, and of two other persons selected by the District Commissioners, one of whom shall be learned in the law.

Applications for license must be made to this board, which shall certify applicants for examination by the respective boards who are adherents to the system of medicine which the applicant desires to practice. But no applicant shall be so certified until satisfactory proof is furnished that he or she is of good moral character, over 21 years of age, and the possessor of a diploma, issued by some medical college duly authorized, conferring the degree of Doctor of Medicine. Passing by other sections of the act, we come to section 10, which provides: That the board of medical supervisors "may, by a vote of four members, refuse to grant, or may revoke a license, and may cause the name of any person to be removed from the record of the Supreme Court of the District of Columbia and from the register of the health office for any of the following causes, to wit: The employment of fraud or deception in passing the examination provided for in this act, chronic inebriety, the practice of criminal abortion, conviction of crime involving moral turpitude, or of unprofessional or dishonorable conduct." Appeals from such orders of removal lie to the Court of Appeals of the District, whose decision is made final.

Section 13 provides that any one practising medicine or surgery, or publicly professing to do so, without license, or after his license or registration has been cancelled by order of said board of supervisors, "shall be deemed guilty of a misdemeanor" and upon conviction thereof shall be punished by fine or imprisonment or both.

The appellant was first brought before the board of medical supervisors in January, 1904, and his license ordered revoked upon a complaint made of unprofessional and dishonorable conduct in the distribution of obscene literature.

The obscene literature consisted of a pamphlet purporting to relate to the cause, prevention, and cure, among other things, of venereal and secret diseases, and of certain filthy and indecent habits and practices.

Upon appeal to this court the order was reversed because of the insufficiency of the complaint. Czarra v. Board of Medical Supervisors, 32 W. L. R. 744.

On January 11, 1905, another complaint was made against said Czarra, charging him with unprofessional and dishonorable conduct, in that he "did distribute, deposit, or place, or

Digitized by Google

cause to be distributed, deposited, or placed, in the vestibules and on the door steps of various residences in the city of Washington and in the District of Columbia aforesaid, a certain circular, book, or pamphlet, containing certain obscene, lewd, and lascivious words, language, statements, and matter, a copy of which is hereto attached as part hereof," etc.

The attached pamphlet is identical with that referred to in the former complaint.

Due notice was given to the party, and he appeared by counsel before the board at the time designated. Czarra entered a plea to the jurisdiction to proceed against him on the following grounds, briefly stated: 1. The act of Congress in so far as it purports to convey authority to revoke his license for alleged unprofessional or dishonorable conduct is void for uncertainty; 2, because said board had not prior to the commission of the alleged offense established any rules defining unprofessional or dishonorable conduct, and any such made since are ex post facto; 3, because the accused has been once tried and convicted of the same offense, and can not be again put in jeopardy.

The plea was overruled, and the appellant was duly tried and found guilty, whereupon the order appealed from was regularly adopted and entered. The proceedings on appeal are in regular form and proper time.

1. The last two grounds of the plea to the jurisdiction are without merit. No question of an ex post facto law can arise because the conviction was had upon the law previously enacted by Congress and not upon any regulations of the board of medical supervisors made thereunder.

Nor is there any case of former jeopardy. Without regard to the question whether the proceeding is criminal, it is sufficient to say that there has been no final judgment of conviction or acquittal. The former decision was reversed because of the insufficiency of the complaint, and a new trial was the necessary consequence. The defect in the complaint being fatal, there was nothing to prevent the filing of a new and effective one.

That Congress had the power to regulate the practice of medicine and surgery in the District of Columbia, and to prescribe the reasonable qualifications required by this act, as well as to create a special tribunal and invest it with the power to revoke the licenses of practitioners for sufficient cause, there can be no doubt. Nor can there be any reasonable doubt that sufficient cause exists in the employment of fraud or deception in passing the examinations required, in chronic inebriety, the practice of criminal abortion, or in case of conviction of crime involving moral turpitude, as declared in the act. Fraudulent conduct in passing the examination and the practice of criminal abortion might well be made separate criminal offenses, if not already so, and punished as such; and probably chronic inebriety also.

3. The single question to be determined is whether, independently of the causes mentioned, "unprofessional or dishonorable conduct," as declared in the act, are sufficiently specific and certain to warrant a conviction thereof, and the exercise of the power of revocation by the board of medical supervisors.

This question was fully argued on the former appeal, but not decided. Speaking for this court at the time, Mr. Justice Anderson, of the Supreme Court of the District, who had been regularly designated to sit during the temporary absence of Chief Justice Alvey, said: "Without expressing any opinion on this point in a case so radically defective as the present, and in which the expression of an opinion by us might possibly be characterized as obiter dictum, we desire to call the attention of the authorities to the fact that grave doubt is entertained as to the power of Congress to delegate to the board of medical supervisors or to any other similar body the authority to determine what shall constitute 'unprofessional or dishonorable conduct' in a medical practitioner so far as to render such a practitioner guilty of a criminal offense if he attempts to continue in the practice of his profession after having been adjudged guilty of such conduct by a board of medical supervisors. Certainly it would seem more appropriate that Congress itself should specifically define what shall constitute 'unprofessional or dishonorable conduct' for the purpose of this legislation than leave so vital a subject to the possible caprice of any board of supervisors." 32 W. L. R. 744, p. 748.

Congress has not amended the act, and instead of indicting and obtaining the conviction of the appellant of the public distribution of printed matter, obscene and indecent, and thus furnishing an undoubted ground for the revocation of his license, the original complaint has been renewed in a form which now compels the decision of the question concerning which grave doubt has been intimated.

In all criminal prosecutions the right of the accused to be informed of the nature and cause of the accusation against him is preserved by the Sixth Amendment.

In order that he may be so informed by the indictment or information presented against him, the first and fundamental requisite is that the crime or offense with which he stands charged shall be defined with reasonable precision. He must be informed by the law as well as by the complaint what acts or conduct are prohibited and made punishable.

In the exercise of its power to regulate the conduct of the citizen, within the constitutional limitations, and to declare what shall constitute a crime or punishable offense, the legislature must inform him with reasonable precision what acts are intended to be prohibited. "Every man should be able to know with certainty when he is committing a crime." U. S. v. Reese, 92 U. S. 214, 220.

This obvious duty must be performed by the legislature itself, and can not be delegated to the judiciary. It may, doubtless, be accomplished by the use of words or terms of settled meaning, or which indicate offenses well known to and defined by the common law. Reasonable certainty, in view of the conditions, is all that is required, and liberal effect is always to be given to the legislative intent when possible. But when the legislature declares an offense in words of no determinate signification, or its language is so general and indefinite as that it may embrace within its comprehension not only acts commonly recognized as reprehensible,

Digitized by Google

but others also which it is unreasonable to presume were intended to be made criminal, the courts, possessing no arbitrary discretion to discriminate between those which were and those which were not intended to be made unlawful, can do nothing else than declare the statute void for its uncertainty. U. S. v. Reese, 92 U. S. 214, 221. As was said in that case: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could rightfully be detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government." The general principle was applied in the following cases: Stoutenburgh v. Frazier, 16 App. D. C. 229, 234: 28 Wash. Law Rep. 256. In that case a party convicted in the Police Court under an act of Congress authorizing the punishment of "all suspicious persons," was discharged on a writ of habeas corpus.

State v. Gaster, 44 La. Ann. 636, 638. The statute declared void in that case provided: "If any judge, justice of the peace, sheriff, or any other civil officer shall be guilty of any misdemeanor in the execution of either of their respective offices, he shall on conviction suffer fine," etc.

Ex parte Jackson, 45 Ark. 158, 164. The statute annulled in that case made it a misdemeanor "to commit any act injurious to the public health, or public morals, or in the perversion or obstruction of public justice or the due administration of the law."

In Augustine v. State, 41 Tex. Cr. App. 59, 76, "mob violence" was held to be uncertain and to leave too much to the discretion of the court. See, also, Jones v. State, 100 Ala. 32, 34; State v. Partlow, 91 N. C. 550, 553; State v. Mann, 2 Or. 238; L. & N. R. R. v. Commonwealth, 99 Ky. 132.

"Unprofessional or dishonorable conduct," for which the statute authorizes the revocation of a license that has been regularly obtained, is not defined by the common law, and the words have no common or generally accepted signification. What conduct may be of either kind remains, as before, a mere matter of opinion. In the absence of some specification of acts by the law-making power, which is alone authorized to establish the standard of honor to be observed by persons who are permitted to practice the profession of medicine, it must, in respect of some acts at least, remain a varying one, shifting with the opinions that may prevail from time to time in the several tribunals that may be called upon to interpret and enforce the law.

As has been said by the Supreme Court of the United States in a case involving the same principle, the question must be reduced to one of fact as contradistinguished from mere opinion. School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 106. In that case an injunction was granted restraining a postmaster from refusing to deliver mail to the appellant, under an order of the Postmaster-General authorizing him so to do, founded on section 3929 R. S., which authorizes the Postmaster-General to withhold from the addressee and return to the senders all letters induced by any scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, etc. The appellant was a chartered institution, engaged, as it alleged, not only in treating people afflicted with ills, but also in the business of teaching and educating others in the practical science of healing. Its system was alleged to be "founded largely and almost exclusively on the physical and practical proposition that the mind of the human race is largely responsible for its ills, and is a perceptible factor in the treating, curing, benefiting, and remedying thereof. And that the human race does possess the innate power, through proper exercise of the brain and mind, to largely control and remedy the ills that humanity is heir to, and complainants discard and eliminate from their treatment what is commonly known as Divine healing and Christian Science, and are confined to practical scientific treatment emanating from the source aforesaid."

After discussing the prevalent differences of opinion with respect to opposing systems of ordinary medical treatment, Mr. Justice Peckham, speaking for the majority of the court, said: "Other instances might be adduced to illustrate the proposition that these statutes were not intended to cover any case of what the Postmaster-General might think to be false opinions, but only cases of actual fraud in fact, in regard to which opinion formed no basis. It may, perhaps, be urged that the instances above cited do not fairly represent the case now before us, but the difference is one of degree only. It is a question of opinion in all the cases, and, although we may think the opinions may be better founded and based upon a more intelligent and a larger experience in some cases than in others, yet after all it is in each case opinion only and not existing facts with which these cases deal. There are, as the bill herein shows, many believers in the truth of the claims set forth by complainants, and it is not possible to determine as a fact that those claims are so far unfounded as to justify a determination that those who maintain them and practice upon that basis obtain their money by false pretenses within the meaning of these statutes. The opinions entertained can not, like allegations of fact, be proved to be false, and therefore it can not be proved as matter of fact that those who maintain them obtain their money by false pretenses or promises, as that phrase is generally understood and as, in our opinion, it is used in these statutes."

If a licensed practitioner of the District of Columbia were to engage in a similar practice and advertise a similar treatment, there can be little doubt of the opinion in respect of his conduct that would be entertained by the adherents of the several reputable systems of medical practice recognized by the act of Congress; and it is quite probable that the board of medical supervisors would agree with the Postmaster-General that it amounted to a case of false pretenses, and would therefore regard the act as constituting both unprofessional and dishonorable conduct within the meaning of the act under consideration.

Doubless all intelligent and fair-minded persons would agree in the opinion of the board of medical supervisors that the act charged

Digitized by Google

against the appellant, in the case at bar, amounted to conduct both unprofessional and dishonorable. But this is not the test of the validity of the particular clause of the statute. The underlying question involved in all cases that may arise is whether the courts can uphold and enforce a statute whose broad and indefinite language may apply not only to a particular act about which there would be little or no difference of opinion, but equally to others about which there might be radical differences, thereby devolving upon the tribunals charged with the enforcement of the law the exercise of an arbitrary power of discriminating between the several classes of acts.

As this is not strictly a case of prosecution for crime, it is contended that the doctrine above announced has no application, but that the appellant's case must be governed by the more liberal rule which applies in the enforcement of statutes generally regulating admission to practice under license. We concur in the view that statutes requiring proof of general qualifications, such as good moral character and the like, before one can be granted a license to practice medicine, stand upon a different ground from those creating offenses and providing penalties therefor upon conviction. Such statutes in general are undoubtedly valid and enforcible. The police power of every State warrants the requirement of the possession of all reasonable qualifications by those who seek to engage in the public practice of medicine, and, incidentally, the extension of a wide discretion to those agencies charged with the duty of inquiry and determination. But we do not agree that the exercise of the same wide discretion can be extended to a case where, when one has been regularly admitted, the deprivation or forfeiture of his license is sought under another or an independent provision of the same statute. The right to practice the profession, once regularly obtained by compliance with the law, becomes a valuable privilege or right in the nature of property, and is safeguarded by the principles that apply in the protection of property lawfully acquired. And these are of the same general nature, though not in all particulars, as those which safeguard him when prosecuted for the commission of a minor offense. This conclusion has the support of the following well-considered cases: Ex parte McNulty, 77 Cal. 164, 170; Matthews v. Murphy, 63 S. W. Rep. 785 (Ky. 1901). And in the American School of Medicine v. McAnnulty, supra, the Supreme Court made no distinction between a civil proceeding relating to the forfeiture of a privilege in the nature of property and a criminal prosecution founded on the same acts.

Moreover, while not itself a criminal prosecution, the proceeding to revoke the license is, nevertheless, a preliminary step thereto. The statute provides a penalty for practicing medicine after the revocation of a license, and in a prosecution therefor the order of revocation must necessarily be held to be conclusive evidence of the fact.

In several cases relied on by the appellee, State statutes have been upheld which authorize the revocation of licenses for "gross immorality," "unprofessional, dishonorable, or immoral conduct," and the like. Meffert v. State Board of Med. Registration, 72 Pac. Rep. 247 (Kansas, 1903); State v. Board, etc., 34 Minn. 387; State Board, etc. v. Ray, 22 R. I. 538; People v. McCoy, 125 Ill. 289; State v. Kellogg, 14 Mont. 426. In no one of these cases, however, was the question under consideration here raised, discussed, or decided. The question discussed in each, and upon which the decisions apparently turned, was the power of the State to enact regulations of the kind as the conditions of admission to practice medicine. Of this, as heretofore observed, there can be no doubt.

The case of State v. Kellogg, supra, is peculiar, and, in our opinion, well illustrates the soundness of the view that the statute itself should indicate the facts which constitute unprofessional or dishonorable conduct, and not leave them to be ascertained and settled by either medical boards or the courts. The license had been revoked in that case by the board of medical supervisors, upon proof that the appellant had been seen to deposit in a furnace and destroy a headless foetus, and when questioned had refused to make any statement, or to explain his conduct. Two of the District courts, in succession, held, with the trial board, that his conduct was unprofessional and dishonorable. On final appeal one member of the court concurred with the inferior tribunals, but the majority, being of a contrary opinion in respect of the necessary conclusion to be deduced from the facts, reversed the order revoking the license.

For the reasons heretofore given we are of the opinion that the order appealed from must be reversed with costs, and the cause remanded with directions to dismiss the complaint. It is so ordered

Reversed.

CHRISTIAN J. UBHOFF, APPELLANT,
v.
CLARENCE A. BRANDENBURG ET AL.

TRUSTEES; AGREEMENT BY ONE OF TWO TRUSTEES; RATIFICATION.

1. On default in payment of a note secured by deed of trust, the property was sold by the trustees, who themselves became the purchasers but took title in the names of third persons, for less than the amount of the debt. The debtor took steps looking to proceedings to avoid the sale, but before instituting such proceedings saw one of the trustees, who had active charge of the matter, and who agreed that if the debtor would find a purchaser for the property at a price sufficient to pay the debt, interest, and expenses, the note would be surrendered to him. He found a purchaser at such a price, to whom the trustees caused the title to be conveyed. His demand for a surrender of the note was refused and suit brought by the trustees to recover the balance remaining due upon the sale of the property under the deed of trust. The foregoing facts were disclosed, but the trial court directed a verdict for plaintiffs. *Held*, that this was error for which the judgment must be reversed.
2. One of several trustees may act as agent of all, especially in cases of emergency, and there may be ratification of the act of one trustee by his associates in the trust.
3. In the present case, while the agreement of the debtor was with one only of the two trustees, he purported to act for his co-trustee, and the subsequent transfer of the property by direction of the trustees to the purchaser found by the debtor was a ratification by the joint act of both trustees of the previously existing agreement between one of them and the debtor.

No. 1501. Decided May 23, 1905.

APPEAL by defendant from a judgment of the

Digitized by Google

Supreme Court of the District of Columbia, at Law, No. 46,172, entered upon a verdict directed by the court in an action for balance due on a promissory note. Reversed.

Mr. Hayden Johnson for the appellant.

Mr. E. C. Brandenburg, Mr. F. W. Brandenburg, and *Mr. W. Mosby Williams* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit instituted in the Supreme Court of the District upon a promissory note, in which, at the trial, the court directed a verdict in favor of the plaintiffs, and the defendant has appealed.

The note was for $9,000. It was executed by one Charles P. Rees and indorsed before delivery by the appellant. It was given for a loan of the same amount from a trust fund in the hands of the appellees and was secured by a deed of trust upon certain real estate owned by Rees and regarded as ample security for the loan. Upon default in the payment of an installment of interest on the note, the property was sold under the deed of trust and was purchased by the appellees themselves, although the title was taken in the first instance in the name of two other persons, who subsequently conveyed the same on the order of the appellees. The amount for which the property was bid in, after the payment of costs and expenses, was insufficient to pay the amount then due on the note. There remained a balance of $728, for which this suit was instituted.

Ubhoff was not present at the sale, and knew nothing of the result of it until the next morning. Then he took some steps towards the institution of proceedings to vacate it. Before doing anything, however, in this direction, he called upon the appellee Williams, who seems to have had the immediate charge of the matter; and at the trial of the case in the court below, he testified that, in the interview then had with Williams, "he was told by the said Williams that if said property could be sold so as to let plaintiffs (the appellees here) out whole—that is, for sufficient to pay the principal of said note, together with interest and expenses—the said trustee would surrender to said Ubhoff his notes, both principal and interest, and release him from further liability on account thereof." Relying, as he says, upon this promise, Ubhoff did not institute any proceedings to vacate the sale, and with the aid of another person, a real estate broker like himself, procured a purchaser for the property for the sum of $10,000, and the purchaser was accepted and a deed of conveyance was executed to him, with again a loan of $9,000 on the property from the appellees, so that the purchaser was required to pay only $1,000 in cash, and this in small sums from time to time within thirty days. Of this sum of $1,000 a portion of $200 was used in the payment of commissions to the broker who had been procured by the appellant to effect the sale, and the sum of $50, likewise as commissions, to Virgil G. Williams, brother of the appellee, W. Mosby Williams, who claimed to have had the right from his brother to sell the property. The residue was applied to the discharge of the costs of sale and the indebtedness.

The sum of $10,000 realized from the sale was amply sufficient to pay all the costs and expenses, as well as the principal and interest due on the notes on which the appellant was liable; and thereupon he demanded of the appellee Williams the surrender of the note. To this demand Williams declined to accede, and he and his co-trustee instituted the present suit to recover the balance claimed to be due. At the trial he denied that he had made any such agreement with Ubhoff as the latter claimed. It appeared also that in the negotiations between Ubhoff and W. Mosby Williams, the latter assumed to act not only for himself but for his co-trustee also, according to the testimony of Ubhoff.

Upon this condition of the testimony, the court, as already stated, directed a verdict in favor of the plaintiffs; and the defendant has appealed.

At the present hearing, of course the testimony on behalf of the defendant below, with all fair and reasonable inferences to be deduced from it, must be taken as true; for such is the necessary result of the motion made on behalf of the plaintiffs at the conclusion of the trial to direct a verdict in their favor. That motion was in the nature of a demurrer to evidence. Assuming, therefore, as we must assume, that there was an agreement or understanding between the appellant Ubhoff and the appellee W. Mosby Williams, that, if the former would procure a purchaser for the property in question for the sum of $10,000, the latter would surrender the note for $9,000 to him and release him from further liability thereon, we find that it is sought to avoid the result of the obligation therefrom resulting on two grounds: (1) Because another and a different contract than that testified to by Ubhoff, namely, one between W. Mosby Williams and Eiker, the new purchaser, appears in the record; and (2) because one of two joint trustees can not bind his co-trustee, and Brandenburg, the joint trustee with W. Mosby Williams, had no part in the negotiations with Ubhoff and had no knowledge of them. But we think that neither one of these grounds is well taken.

1. We fail wholly to see wherein there is any relevancy in the written contract between W. Mosby Williams and Eiker to this case. The contract or agreement between Ubhoff and W. Mosby Williams was that if Ubhoff would procure a purchaser of the property for a sum sufficient to pay the principal and interest of the note and costs, Williams would surrender the note. Ubhoff procured a purchaser for $10,000, which is conceded by both sides to be sufficient for the purpose specified, and had him brought to Williams, whether by himself or another is of no consequence here. Then, when Williams and the proposed purchaser had come together, these two entered into a contract in writing between themselves as to how the sale is to be consummated and the sum of $10,000 paid. Plainly this contract had nothing whatever to do with Ubhoff's contract to procure a purchaser. Ubhoff had performed his contract when he produced a purchaser who was willing and able to purchase, and who actually consummated such purchase to the satisfaction of the appellees.

Digitized by Google

2. The second ground relied upon by the appellees is that Williams could not bind his co-trustee by any such agreement as he made with Ubhoff. And it is undoubtedly true, as the general law, that, when the administration of a trust is vested in several trustees, they must all cooperate in the exercise of the powers of their office and can not act separately or independently of each other. This is held by all the authorities on the subject. But this rule is not without its exceptions and qualifications. One trustee may in many things act as agent for all the trustees, especially in cases of emergency, and there may be ratification of the act of one trustee by his associates in the trust. Mr. Williams in express terms purported to act for him as well as for himself. Then, if appellant's statement that he procured a purchaser of the property in pursuance of his agreement with Williams be correct, and we must here assume the truth of the claim, and the contract was consummated by the two trustees, we do not see why there was not ratification by the joint trustees of the act of the one. The contract may be assumed to have been beneficial to the trust estate as well as to the appellant. It avoided litigation to vacate the sale, and it realized for the estate the full amount of its claim and probably more than the full amount. It was a proper and a meritorious contract in itself and one not to be discouraged by easy repudiation.

The estate, as represented by the trustees, can not be permitted to have the benefit of it, and at the same time to repudiate its obligations, any more than individuals could be so permitted under similar circumstances, for it must be remembered that it is conceded here by the motion of the plaintiffs in the case for a verdict that the appellant brought the purchaser to Williams in pursuance of the agreement between himself and the latter, and that in pursuance of such production of a proper purchaser a sale to him was effected and consummated. This sale being concurred in by both trustees operated as a ratification by both of the previously existing agreement between Williams and the appellant.

We are of opinion that it was error to take this case from the jury, and for this error the judgment must be reversed, with costs, and the cause will be remanded for a new trial. And it is so ordered.

Reversed.

Release, Construction of—General and Particular Words.

General words in a release are to be limited and restrained to the particular words in the recital. Such is the decision of the Supreme Court of the United States in the recent case of Texas and Pacific Rwy. Co. v. Dasheill, reported in the Advance Sheets for July 1, 1905. In that case it appeared that the release, after enumerating the injuries sustained as "bruising my body, right leg, right arm, and giving me a scalp wound," recited that "to maintain amicable and pleasant relations and avoid all controversy in respect to said matter," and for a monetary consideration, the employer (the plaintiff) released the railway company from all claims of every kind and character whatsoever arising from "the injuries and damages sustained by me in the manner or upon the occasion aforesaid, and arising or occurring or hereafter arising or occurring any way therefrom." The court construes the release as referring only to the specific or enumerated injuries sustained "in the manner or upon the occasion aforesaid," and the results of those injuries, and did not extend to impaired mental powers and partial loss of sight resulting from injuries received at the same time. The court, in giving this construction to the release, applies the rule above stated, that general words in a release are to be limited and restrained to the particular words in the recital, and cites the cases of Union Pacific R. Co. v. Artist, 60 Fed. 365; Lumley v. Wabash R. Co., 76 Fed. 66, and Union Pacific R. Co. v. Harris, 158 U. S. 326.

Negligence—Duty to Muffle Sound of Gasoline Engine.—One operating a gasoline engine near a highway need not adopt any particular method of muffling the sound of the exhaust. Wolf v. Des Moines Elevator Co. (Iowa), 102 N. W. Rep. 517.

Negligence—Res Ipsa Loquitur.—The mere fact that lumber which defendant was unloading from a car fell and injured plaintiff's intestate held not to raise a presumption of negligence on defendant's part. Laforrest v. O'Driscoll (R. I.), 59 Atl. Rep. 923.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Wolf & Rosenberg, Solicitors

In the Supreme Court of the District of Columbia.
T. Edward Clark, Complainant, v. Herman M. Schriener and Luella Schriener, Defendants.
Equity No. 25,336.

Alexander Wolf and Percy Metzger, trustees, having reported to the court that they have sold the real estate beginning at a point on the south line of North S street at a distance of sixty-three and thirty-three hundredths (63.33) feet from Vermont avenue; thence running with the south line of north S street west forty-nine and ninety-one hundredths (49.91) feet; thence south sixteen and sixty-nine hundredths (16.69) feet; thence southeasterly and perpendicularly to the line of Vermont avenue fifty-four and eighty-three hundredths (54.83) feet; thence north thirty-nine and forty hundredths (39.40) feet to the beginning, containing thirteen hundred and ninety-nine and seventy-three hundredths (1399.73) square feet of land with improvements thereon, for the sum of seventeen hundred dollars ($1,700), subject to an incumbrance of three thousand dollars ($3,000), it is, this 27th day of July, A. D. 1905, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 21st day of August, 1905. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter prior to said date. By the Court: WRIGT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-3t

Digitized by Google

Legal Notices.

Bates Warren and Wm. L. Browning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph Thomas Bender**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1905. HARRY FRANKLIN BENDER, 19 Barclay st., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,064. Administration. 30-3t

---

A. B. Duvall and A. Leftwich Sinclair, Attorneys

In the Supreme Court of the District of Columbia,
Holding a District Court.

In Re the Opening of an Alley in Block 41, North Grounds, Columbian University, and in Block 42 of University Park, in the District of Columbia.
District Court, No. 659.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An act to amend chapter fifty-five of an act entitled 'An act to establish a code of law for the District of Columbia,'" have filed an amended and supplemental petition in this court praying the condemnation of the land necessary for the opening of an alley in block numbered 41, North Grounds, Columbian University, and in block 42 of University Park, in the District of Columbia, as shown on an amended plat or map filed with said petition as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in the aforesaid act of Congress. It is, by the court, this 20th day of July, A. D. 1905, ordered that all persons having any interest in these proceedings be and they are hereby warned and commanded to appear in this court on or before the **10th day of August, A. D. 1905, at 10 o'clock A. M.**, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 10th day of August, A. D. 1905. It is further ordered that a copy of this notice and order be served by the United States marshal for said District, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal or his deputies, within the District of Columbia, before the said 10th day of August, A. D. 1905. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk. 30-1t

---

Irwin B. Linton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sarah Guffin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of July, 1905. SUSAN A. GUFFIN, HARRIET C. GUFFIN, 1938 First st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,938. Administration. 30-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

M. J. Colbert and R. S. Hume, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Bankruptcy Court.

In re George J. Stinxing, Bankrupt.
Bankruptcy, No. 369.

It is by the court this 26th day of July, A. D. 1905, ordered that the sale reported by John R. Lang, Jr., trustee, of sublot 42, in square 462, Washington, D. C., to Frank Hume, for the sum of $5,000, be, and the same is, ratified and confirmed unless cause to the contrary be shown to the court on or before **Wednesday, August 2, next, at 10 o'clock A. M.** A copy of this order shall be published in The Washington Law Reporter once before said last named day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by R. J. Meigs, Jr., Asst. Clerk. 1t

---

Robt. E. L. White, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Engelbert Endres**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th daiy of July, 1905. JANE ENDRES, Tennallytown, D.C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,056. Administration. 30-3t

---

Irving Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Elizabeth Behrens Kenny**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **27th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of July, 1905. JOHN W. PILLING, 1416 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,832. Administration. 30-3t

---

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Wiggins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of July, 1905. J. HARRY WATERS, Laurel, Md.; JOHN W. FARRAR, 1303 3d st. N. W., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,036. Adm. 30-3t

---

F. H. Stephens, Solicitor

In the Supreme Court of the District of Columbia.
John H. von Dohlen et al. v. Dora Hannemann et al.
Equity, No. 23,367.

Upon hearing the report of Luther L. Apple, trustee, stating that he has sold lots seventy-three (73) and seventy-four (74) in Eugene McC. Wardwell et al.'s subdivision of part of Pleasant Plains, as described in the original bill filed in this cause, to John B. Daish for the sum of twenty-nine hundred dollars ($2,900.00), it is, this 27th day of July, 1905, ordered, adjudged, and decreed that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the **28th day of August, 1905.** Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter prior to said date. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-3t

Digitized by Google

Legal Notices.

L. C. Williamson, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In the Matter of the Estate of Wilson Gregory, deceased. Administration. No. 12,948.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, by Frances G. Gregory, it is ordered this 24th day of July, A. D. 1905, that notice be and is hereby given to **Anna Gregory Carl, Margaret Gregory Taylor, William H. Gregory, Mary Gordon, Phoebe Oliver, Edward F. Brooks, Mary Brooks, Lula Brooks, Katie Brooks, Webster Stauffer, Mary Myrtle Ranck, Walter Stauffer, Drew Stauffer, Mabel Brooks,** and all others concerned, to appear in said court on the **28th day of August, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Times once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 30-3t

---

Alfred B. Lind, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel E. Loving,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1905. LUCY D. LOVING, 13 L st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,959. Administration. 30-3t

---

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frank L. Hanvey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of July, 1905. WALTER H. ACKER, 1420 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,063. Administration. 30-3t

---

SECOND INSERTION.

In the Supreme Court of the District of Columbia.

Sarah E. Frankland et al. v. Richard Frankland.

Equity, No. 25,045.

George C. Aukam, trustee, having reported to the court the sale of real estate known as part of lot 11 in square 406 in the city of Washington, District of Columbia, with the improvements thereon, being premises number 916 8th street northwest, in said city, and being the real estate mentioned and described in the bill of complaint filed in the above entitled cause, to Robert V. White for the sum of five thousand and thirty dollars ($5,030.00), it is by the court, this 14th day of July, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary thereof be shown in this court on or before the **20th day of August, 1905;** provided a copy of this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

Legal Notices.

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In re Estate of Reuben B. Detrick, Deceased.

Administration. No. 12,549.

The executor and trustee having reported that he has sold lots one hundred and fourteen (114) to one hundred and twenty (120), both inclusive, in square five hundred and fifty-one (551), being Nos. 105 to 107 Reaves Court, to Cynthia E. Dowell for fifty-six hundred dollars ($5,600), cash, it is by the court this 18th day of July, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **18th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

---

Fountain Peyton, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ida Larkins,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. MARY THOMAS, 1107 ½ st. Court N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,044. Administration. 29-3t

---

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Massachusetts, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Otis B. Bullard,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. HENRY M. CUTLER, Holliston, Mass. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,965. Administration. 29-3t

---

Victor H. Wallace, Solicitor

In the Supreme Court of the District of Columbia.

Inez L. Rosenbaum v. Richard W. Rosenbaum and Rose Illman. Equity. No. 25,131.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 12th day of July, A. D. 1905, ordered that the defendants, **Richard W. Rosenbaum and Rose Illman,** cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law Reporter and The Washington Times. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

---

C. Clinton James, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John H. Richardson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,061. Administration. 29-3t

Digitized by Google

Legal Notices

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Luella H. Bush**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers there of legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. CLARA R. BUSH, 1537 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,046. Administration. 29-3t

---

Edward S. Moores, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ebenezer W. Patton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. JOHN R. BERG, 319 F st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,912. Administration. 29-3t

---

R. R. Horner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of David Lee, Deceased.

No. 13,030. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia I. Davis, it is ordered this 17th day of July, A. D. 1905, that notice be and hereby is given to **all the heirs at law, unknown, and next of kin**, and all others claiming interest in his estate, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

In the Supreme Court of the District of Columbia.

Harry M. Packard, Complainant, v. William Brown et al., Defendants. No. 24,604. In Equity. Doc. 55.

Ralph P. Barnard, trustee, having reported to the court the sale of the real estate involved in the above entitled cause, and being, to wit, lot one (1) in block twenty-five (25) of John Sherman, trustee's, subdivision of part of "Mount Pleasant" and "Pleasant Plains," now known as Columbia Heights (with the exception of the east 26.84 feet front by the full depth thereof of the said lot taken by the District of Columbia in the extension of Eleventh street), as per plat of said subdivision as the same appears of record in the office of the surveyor for said District, in book Governor Shepherd's, at page 137, said lot being unimproved, to Ernest L. Schmidt for the sum of eleven hundred dollars ($1,100.00), and the purchaser having tendered himself ready to comply with the terms of sale. It is by the court, this 17th day of July, A. D. 1905, ordered that upon compliance with the terms of sale, the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **17th day of August, 1905**. Provided a copy of this order be published once a week for three successive weeks before said day in The Washington Law Reporter. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Legal Notices.

H. Anton Heitmuller, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charlotte Hasselbusch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. WM. HASSELBUSCH, 20 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,048. Administration. 29-3t

---

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Benjamin T. Rhodes, Deceased.

No. 12,979. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Josephine Rhodes, it is ordered this 18th day of July, A. D. 1905, that notice be and hereby is given to **Alice I. Williams**, of Deruyter, Madison Co., New York, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

J. Clarence Price, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In Re the Estate of Agnes M. Beuchert, Deceased.

No. 12,867.

Upon consideration of the report of John A. Ruppert and Lena Beuchert, executor and executrix, respectively, of said estate, stating that they sold at public auction sublot one hundred and twenty-six (126), in square eight hundred and sixty-one (861), in the city of Washington, District of Columbia, to Zula H. and Richard W. Burkhart for the sum of three thousand six hundred and twenty-five ($3,625.00) dollars, and also that they sold sublot numbered five (5), in square numbered nine hundred (900), in said city, to Mary Buhler for the sum of three thousand four hundred and fifty ($3,450.00) dollars, it is, by the court, this 18th day of July, 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of August, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

---

Malcolm Hufty, Solicitor

In the Supreme Court of the District of Columbia.

Lawrence Hufty, Complainant, v. The Unknown Heirs, Devisees, or Alienees of John Law, Defendants. Equity. No. 25,506.

The object of this suit is to declare the title of the complainant to original lot one (1), in square seven hundred and sixty-eight (768), in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of complainant, by Malcolm Hufty, his solicitor, it is, by the court, this 19th day of July, 1905, ordered that the defendants, **the unknown heirs, devisees, or alienees of John Law**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court, otherwise this cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Digitized by Google

Legal Notices.

Sidney F. Marshall, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna J. King**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. A. VIRGINIA CHESSMAN, 1829 N. Gratz st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,926. Administration. 29-3t

---

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.

John Shrughrue et al., Complainants, v. Rudolph Pfeil et al., Defendants. Equity. No. 25,394.

On motion of complainants, by Lester & Price, their attorneys, it is, this 14th day of July, 1905, ordered that the defendant, **Rudolph Pfeil**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. The object of this suit is to have appointed trustees in the place and stead of Henry Jordan and John W. Schaefer, both deceased, to execute the powers created and vested in said deceased trustees by a certain deed of trust, recorded in liber 1581, folio 410, of the land records of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

---

F. L. Siddons, Solicitor

In the Supreme Court of the District of Columbia,

Holding a Special Term for Equity Business.

Elizabeth B. Hallman v. Ellwood L. Hallman and Emma La Rue, Alias Emma Harvey. Equity Number 25,465. Docket 56.

ORDER OF PUBLICATION.

The object of this suit is to procure a dissolution of the bonds of marriage existing between the complainant and defendant Ellwood L. Hallman on the ground of alleged adultery by said defendant. On motion of the complainant, it is this 19th day of July, A. D. 1905, ordered that the defendants, **Ellwood L. Hallman and Emma La Rue, alias Emma Harvey**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, a newspaper published in the city of Washington, before said fortieth day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

---

THIRD INSERTION.

Sam'l Maddox, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Jesse Brown**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 31st day of July, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. H. ROZIER DULANY, 1320 F st. N. W., by Sam'l Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,304. Administration. 28-3t

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Henry Klinge**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of July, 1905. CATHERINE KLINGE, 257 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,031. Administration. 28-3t

---

F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Patrick Fealy v. Anna Dore et al.

Equity. No. 25,509.

The object of this suit is the partition by sale of lot numbered thirty-three (33) in George Callaghan's subdivision of lots seventeen (17) and eighteen (18) in L. L. Chapman's subdivision of square numbered three hundred and thirty-five (335) as per plat in book 12, page 182, of the records of the surveyor's office in the District of Columbia. On motion of the complainant it is this 7th day of June, A. D. 1905, ordered that the defendants, **Timothy Fealy, Ellen Fealy, Johannah Fealy, Mary Columbus, Dennis Pierce Fealy, Thomas Pierce Fealy, Daniel Pierce Fealy, David Leahy, Mollie Jubain, Johannah Mc. Grath, Nellie Cahill, Thomas Feahy, Catherine Fealy, Mary O'Connor, James D. Leahy, Catherine Leahy, Ellen Collins, Johannah Hartnett, Edward O'Connell, and Patrick O'Connell**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 28-3t

---

F. Sprigg Perry, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Emily V. Sproston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. WILLIAM G. SPROSTON, Hotel Atlamont, Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,984. Administration. 28-3t

---

John Selden, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Edes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of July, A. D. 1906**, otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1905. HENRY H. FLATHER, Riggs Natl. Bank; J. HUBLEY ASHTON, Pacific Building; THOMAS HYDE, 1537 28th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,883. Administration. 28-3t

---

Justice blanks of every description for sale at this office.

Digitized by Google

Legal Notices.

W. C. Prentiss, Solicitor

In the Supreme Court of the District of Columbia.
William H. Saunders et al. v. William Holmead et al.
Equity. No. 23,552. Doc. 53.

Upon consideration of the seventh report of William C. Prentiss and Charles S. Muir, receivers in the above entitled cause, filed this day, stating they have received from Anna E. Larigey an offer of three thousand five hundred dollars ($3,500.00) for the east twenty (20) feet front by depth thereof of lot numbered thirty-six (36), of Saunders and Galliher, trustees' subdivision, and all of lots numbered sixteen (16), twenty-nine (29), thirty (30), and the east twenty (20) feet front by the depth thereof of lot numbered twenty-eight (28), in the Washington Loan and Trust Company, trustees' subdivision of block numbered thirty-one (31), in "Petworth addition to the city of Washington," District of Columbia, all unimproved; and from the said Anna E. Larigey an offer of eight hundred dollars ($800.00) for all of lot numbered thirty-one (31), in the last-mentioned subdivision, unimproved, both of said amounts payable one-third (⅓) cash and the balance in one (1) and two (2) years with interest at six (6) per centum per annum, payable semi-annually, secured by deeds of trust on the property purchased, or all cash at the option of the purchaser, it is this 13th day of July, 1905, ordered, adjudged, and decreed that said receivers be and they are hereby authorized to accept said offer and convey said real estate to said purchaser upon compliance with the terms of sale, unless cause to the contrary be shown on or before the 7th day of August, 1905. Provided a copy of this order be published in The Washington Law Reporter and The Washington Evening Star once a week for three (3) successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-3t

John Ridout, Solicitor

In the Supreme Court of the District of Columbia.
Phillip T. Hall v. The unknown heirs, devisees, and alienees of Charles A. Beatty, John M. Beatty, Mary F. Beatty, Randle H. C. Beatty, Thomas J. Beatty, Violetta Beatty, Sophia M. Beatty, Francis G. Beatty, Robert M. Beatty, Charles F. Beatty, George Gordon, Stephen West, John Davidson, Geo. F. Hawkins, Anne Campbell, Edward Crowley, John Threlkeld, William King, Sr.
In Equity. No. 25,442.

The object of this suit is to establish of record the title in fee simple of the complainant to all of lots numbered 311, 312, 313, and 314 of Phillip T. Hall's subdivision of parts of lots 306 and 270 in square numbered 1300 in the city of Washington, District of Columbia, formerly square 130 in that part of the said city of Washington formerly known as Georgetown, as per plat recorded in book 28, page 14, in the surveyor's office in the District of Columbia; also part of lot 306, in Mary A. Weaver et al.'s subdivision of parts of lots 269, 270, and 271, in said square 1300, as per plat recorded in book Georgetown No. 2, page 14, in said surveyor's office, and parts of lots 269 and 270 in said square 1300, said parts of said lots 306, 269, and 270 being fully described in the bill in this cause; also all of lot 275 in said square. On motion of the complainant, it is this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, otherwise the cause will be proceeded with as in case of default, sufficient cause having been shown for dispensing with a longer period of publication. THOS. H. ANDERSON, Justice. True copy. Test. J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. 28-3t

L. Cabell Williamson and John A. Butler, Solicitors

In the Supreme Court of the District of Columbia.
Ethel Payne v. Herbert Payne, Ada Wood.
Equity No. 25,193.

The object of this suit is to secure a divorce on the ground of adultery. On motion of the petitioner by her solicitors, it is this 29th day of May, A. D. 1905, ordered that the co-respondent, Ada Wood, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once in each week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 28-3t

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice, That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Fanny Heidenheimer, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 31st day of July, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1905. ELIAS HEIDENHEIMER, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,264. Administration. 28-3t

Chas. W. Clagett, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Patrick Mann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of July, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1905. ROBERT E. MANN, 207 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,040. Admn. 28-3t

J. B. Larner, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

John Welsh, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Andrew Link, Deceased, Defendants. Equity. No. 25,428.

The object of this suit is to quiet the title of the complainant to lot numbered thirty-three (33) in Andrew J. Miller's subdivision of lots in square numbered eighty-four (84), as per plat recorded in the office of the surveyor of the District of Columbia, in liber 20 at folio 48. Upon motion of the complainant, by his solicitor, it is this 12th day of July, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Andrew Link, deceased, cause their appearance to be entered herein on or before the first rule day of September, 1905, otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based on the bill filed herein, that further publication is unnecessary. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-4t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Martha J. Coston, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 4th day of August, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of July, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Wood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,084. Administration. 28-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 31

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - AUGUST 4, 1905

CONTENTS.

Editorial 481
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Thomas O. Probey, plaintiff in error, v. The District of Columbia 482
Jerome Hubbard, appellant, v. Rebecca R. Perlie 482
John Cherry et al., appellants, v. Elizabeth Ann Whalen 485
Simon P. Drew et al., appellants, v. Anderson Hogan et al 488
Legal Notices 491

Administration of Estates of Absentees.

In the case of Cummins v. Reading School District, decided May, 1905, by the Supreme Court of the United States (25 Sup. Ct. Rep. 721), it is held that provisional administration upon the estate of an absentee, on the theory that he is probably dead, but making provision for the protection of his rights in the event he shall subsequently appear, is not repugnant to the Fourteenth Amendment of the Federal Constitution. The substance of the decision is stated in the syllabus as follows:

"The due process of law clause of the Fourteenth Amendment to the Constitution of the United States does not wholly deprive a State of the power to confer jurisdiction on its courts to administer the estates of absentees, irrespective of the fact of death, by a special and appropriate proceeding distinct from the general law for the settlement of the estates of decedents.

"Fixing the period of a person's absence from his last domicile within the State which will be sufficient, under Pa. Laws 1885, p. 155, to authorize the administration of his property by the special proceeding provided by that statute at seven or more years, is not so unreasonable as to render the statute repugnant to the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

"Notice by publication of the special proceeding provided by Pa. Laws 1885, p. 155, for the administration of the estates of absentees, satisfies the requirement of the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

"The safeguards for the protection of the property of an absentee in case of his return, afforded by Pa. Laws 1885, p. 155, providing a special proceeding for the administration of the estates of absentees, satisfy the requirement of the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, as that statute authorizes the revocation of the administration at any time on proof that the absentee is in fact alive, and in such event permits him to recover the shares of his estate received by the distributees, and provides that until the latter shall give security for refunding their shares with interest in case the supposed decedent shall be alive, no distribution shall be made, and that in case of inability to give such security the money shall be invested under the control of the court, and the interest only paid to the distributees."

The court distinguishes the case at bar from its previous decision in the case of Scott v. McNeal, 154 U. S. 34, in which it was held that administration upon the estate of a living person, which had been granted upon the theory that he was actually dead, was void.

In the opinion in the Cummins case, the following language is used:

"The error underlying the argument of the plaintiff in error consists in treating as one two distinct things—the want of power in a State to administer the property of a person who is alive, under its general authority to provide for the settlement of the estate of deceased persons, and the power of the State to provide for the administration of the estates of persons who are absent for an unreasonable time, and to enact reasonable regulations on that subject. The distinction between the two is well illustrated in Pennsylvania, for in that State, prior to the enactment of the statute in question, it had been expressly decided that a court of probate, as such, was absolutely wanting in jurisdiction to administer the estate of a person who was alive, simply because there existed a presumption which was rebuttable as to the fact of death. This is also aptly illustrated by the law of Louisiana. In that State, as we have seen, provisions have existed from the beginning for the administration of the estates of absentees as distinct from the power conferred upon the courts of probate to administer the estates of deceased persons. In this condition of the law, under an averment of death, an estate was opened in a probate court of Louisiana, and administered upon. A question as to the validity of that administration subsequently arose in Burns v. Van Loan, 29 La. Ann. 560, 563. As the proceedings were probate proceedings not taken under the statute providing for the administration of the estates of absentees, the Supreme Court of the State of Louisiana declared them to be absolutely void. As it can not be denied that, in substance, the Pennsylvania statute is a special proceeding for the administration of the estates of absentees, distinct from the general law of that State, providing for the settlement of the estates of deceased persons, and as, by the express terms of the statute, jurisdiction was conferred upon the proper court to grant the administration, it follows that the Supreme Court of Pennsylvania did not deprive the plaintiff in error of due process of law within the intendment of the Fourteenth Amendment."

Digitized by Google

Court of Appeals of the District of Columbia.

THOMAS O. PROBEY, PLAINTIFF IN ERROR,
v.
THE DISTRICT OF COLUMBIA.

POLICE REGULATIONS; OBSTRUCTING STREETS.

Evidence that the proprietor of a carriage repository allowed a carriage owned by him to stand in the street in front of the premises for upwards of three hours, and that his brother refused to comply with a demand made by a policeman for its removal, held insufficient to support a conviction under an information charging him with unnecessarily obstructing the street.

No. 1537. Decided May 23, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. Charles F. Diggs for the plaintiff in error.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the defendant in error.

Mr. Justice DUELL delivered the opinion of the Court:

The plaintiff in error was found guilty by the Police Court of the District of Columbia upon an information charging him with unnecessarily obstructing the free passageway of one of the streets of the District of Columbia. The regulation under which the information was filed is known as section 14 of article 10 of the Police Regulations. It reads: "No vehicle shall unnecessarily obstruct the free passageway of any street, or avenue, nor hinder or delay the passage of any other vehicle."

Exceptions were taken to the rulings of the court on matters of law, and notice duly given by the defendant in open court that a writ of error would be applied for, which having been granted, brings the judgment before us for review.

The information specifically charged that the plaintiff in error, being the owner of a carriage, did on the 18th day of March, 1905, unnecessarily obstruct the free passageway of a street in the District, known as Thirty-second street northwest. The proofs consisted of the evidence of a police officer that on March 18, 1905, he passed a carriage repository, bearing the name Probey, and saw a carriage, without a horse attached, standing in the street in front of the repository; that he told the brother of the defendant to have it moved, who replied that he would not; that the carriage stayed there for three hours, and that it was owned by the defendant.

In our opinion this testimony was insufficient and no conviction should have been had.

Ten days before the committal of the offense complained of, and fifteen days before the trial of this case in the Police Court, we handed down a decision which should have controlled that court in its disposition of this case. Gassenheimer v. District of Columbia, 33 W. L. R. 197. We there recognized the established rights of owners and occupiers of lands abutting on a public highway to encroach upon the primary right of the public to a limited extent and for a temporary purpose. We said: "We are of the opinion that proof that an automobile stood in front of a hotel for two hours is not sufficient to sustain a conviction that the free passageway of a street has been unnecessarily obstructed and traffic thereon hindered and delayed. . . . The information can not be sustained upon any inference. It requires sufficient legal proof in order that such a charge be sustained." We are unable to follow counsel for the District in their argument that there is a material distinction between that case and the one at bar. Both prosecutions were under the same section and article of the police regulations. The facts here adduced are, if possible, more meagre than in the other case. The instruction asked for by the plaintiff in error, with the reason therefor, which is based upon the claim that the record failed to show any unnecessary obstruction of the street, or any hindrance or delay to vehicles thereon, was well founded, and should have been granted.

No violation of the police regulation, upon which the information was based, having been proven, it follows that the decision of the Police Court was erroneous, and its judgment must be reversed, with costs, and the case remanded with direction to discharge the defendant. It is so ordered.

Reversed.

JEROME HUBBARD, APPELLANT,
v.
REBECCA R. PERLIE.

PERSONAL INJURIES; SCOPE OF RECOVERY; PRACTICE.

1. Under the rule now prevailing, in actions for personal injuries, where the declaration is sufficient, damages occurring as the result of the injuries received down to the time of trial may usually be recovered.
2. The pleadings should give some notice to the defendant of the claims against which he is called to defend, but liberal effect is given thereto; and an allegation in the declaration that the pain and suffering still continue to exist and cause expense, held sufficient to extend the scope of the recovery, so as to permit of the introduction of testimony as to medical treatment received after the institution of the suit.
3. Exceptions taken to the charge of the court in an action for assault and battery held untenable.
4. Exceptions to certain paragraphs of the charge of the court indicated by letters on the margin, and thereafter printing the same in capital letters, will not be considered by this court.

No. 1469. Decided May 2, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,699, entered upon the verdict of a jury in an action of trespass. Affirmed.

Mr. Leo Simmons for the appellant.

Mr. E. B. Hay and *Mr. F. H. Stephens* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The declaration in this case was filed by the appellee as plaintiff, on October 13, 1902, to recover damages for injuries received from an assault and battery committed by the defendant on October 1, 1902.

After a statement of the facts constituting the assault, the declaration alleged that by

Digitized by Google

reason of the wounds and injuries so received, plaintiff "became and was sick, disordered, and shocked as to her nervous system, and so remained and continued for a long space of time, to wit, for the space of the number of days intervening between the inflicting of said blows and committing of the said assault until the filing of this declaration, during all of which time the said plaintiff suffered and underwent great pain, which still continues to exist, and which caused said plaintiff to pay and expend money in and about endeavoring to be cured of the wounds, bruises, sickness, soreness, lameness, and disorder and nervous affection aforesaid, occasioned by the assault aforesaid, to the great damage and injury of the said plaintiff. Wherefore the said plaintiff claims that she is injured and has sustained damages to the amount of $10,000, which she claims besides costs."

The evidence on behalf of the plaintiff tended to show that she had occupied the house of defendant, as a tenant, for one year, ending September 1, 1902; that her niece lived with her, and defendant remained in the house, occupying a room reserved for that purpose in the lease; that prior to September the defendant married the said niece, and thereafter notified plaintiff to vacate the house; that she did so, leaving part of her furniture to be called for when wanted; that on October 1 she went to the house with a wagon to remove said furniture; that she was admitted to the house, and defendant's wife met her in the parlor; that the latter telephoned to defendant to come home; that she undertook to take a table from a room upstairs, when defendant's wife seized it to prevent its removal; that defendant came in unobserved by plaintiff and seized her and "slammed her against the sharp edge of the door;" that she became unconscious, but did not fall, and said to defendant, "You have taken the law in your own hands;" that defendant replied: "Damn the law; I will break your neck downstairs;" that he then slammed her against the other side of the door; that she remembered nothing thereafter until she went into the street; that she re-entered the house and fell in a rocking chair, and defendant brought her a glass of water; that defendant said, "Let this blow over." To which she replied: "This is the biggest mistake of your life;" that she returned home, suffered intensely, and was confined to her bed for thirteen days; that she had suffered constantly since and had had surgical treatment; that she had her back cauterized for the ailment resulting from the injury. Defendant objected to this as an expression of opinion, and excepted when overruled.

Dr. Morgan testified for plaintiff that he had been called within twenty-four hours, and saw bruises on plaintiff's right and left arms and on her right leg above the knee. She complained of feeling sore and of pains down the back and through the whole body. She was in a highly nervous, excitable state. The fee for his treatment and trouble would be about $250. In cross-examination, he said the bruises had every appearance of having been made within twenty-four hours. That plaintiff had subsequently called upon him and telephoned him often, and made herself a nuisance. That his estimate of fee would be chiefly for the annoyance given him and not for actual treatment. That he had once treated plaintiff for bruises some five years before, but these had no connection with those treated in October, 1902. Objection was made to the evidence of charge for services on the ground that it included those rendered after the declaration had been filed. This was overruled and exceptions noted.

Dr. Ruffin testified to having been consulted by plaintiff some four or five months before the trial. Found nothing the matter with her chest. There was a place on her collar bone, and there may have been a fracture there ten or twenty years before. She had a rapid pulse and was more or less nervous. Had been so ever since he had known her. He made no statement of any charge for services. Objection was also made to his testimony.

Dr. Ford Thompson, called by the plaintiff, testified that he had known her for years; that some years ago, prior to the assault, he had operated upon her for a tumor just below the knee joint; that she had consulted him some two months since for a painful spine; that he cauterized her, producing some ulcers; that her general condition did not appear to be bad; that in his opinion injury to the spine might have followed if she had been seized by a powerful man and thrown against the door-jam, but that such a condition would not always follow; that she had been under the treatment of a young physician who occupied the house; that he supposed his bill would be about $100 "if she is able to pay it." A like objection to this evidence was also made and overruled, with exceptions reserved.

Defendant's testimony tended to show that there had been considerable trouble with plaintiff, and defendant had requested her to stay away from his house. That he had told her when she got ready to move her furniture he would help her, but did not want her to come when he was not there. That defendant was telephoned for, went to the house and found plaintiff there. That plaintiff was abusing his wife. That he told plaintiff to leave or he would call a policeman. That he said, "You must go out of the house; you can not have this business around here." That in saying so he put his hand on her arm. That she said: "You have put your hands on me; you have taken the law in your hands." That he said, "I will call an officer," when she said: "I guess it is not necessary; I guess I will go." That she then went downstairs. That defendant went down and saw some chairs being loaded in a wagon. That he said: "Those chairs do not belong to you;" and took one and started to put it in the hall, when she took hold of it and said he could not have it. That she went away, but returned in a short time, and said she wanted to talk the matter over, and was excited and nervous and wanted some whiskey. That there was no whiskey, but defendant gave her some stomach bitters with a little water, which she drank. That she remained a while talking, asked defendant's wife to forgive her, and then went away. That he did not use any violence; did not push her against the door. That he told her this thing could not go on and took hold of her arm without violence; was provoked and ex-

Digitized by Google

cited but did not grip her arm. That he took her by the arm because she was trying to pull the table away from his wife at the time.

Defendant's wife testified to the abusive language of plaintiff, and to her message to her husband to come to the house because of it. She corroborated defendant's testimony as to the occurrences after his arrival.

Several witnesses were called who corroborated defendant in some substantial particulars, and several others impeached plaintiff's reputation for veracity.

Defendant asked fourteen special instructions to the jury, all of which were denied. The court then charged the jury generally and they returned a verdict for plaintiff for $600. From the judgment thereon defendant has appealed.

1. We are of the opinion that there was no error in permitting the introduction of the testimony tending to show medical treatment after the institution of the suit under the declaration.

Where the declaration is sufficient, damages occurring as the result of the injuries received down to the time of trial may be recovered now usually. The strictness of earlier rules in that regard does not now generally prevail. Unquestionably the pleadings should give the defendant some notice of the claims against which he is called to defend; but liberal effect is given thereto. The declaration in this case is inartificial, and at first glance would seem to warrant the inference that the damages are confined to the period between the commission of the assault and the date of filing; but we think that the subsequent allegation that the pain and expense still continue to exist and cause expense are sufficient to extend the scope of the recovery. R. R. Co. v. Patterson, 9 App. D. C. 423, 434: 25 Wash. Law Rep. 36; Ergott v. May, etc., 96 N. Y. 264, 277; West Chicago R. R. v. McCallum, 169 Ill., 240, 243. An amendment of the declaration, when the objection was made, could have removed all possible ground of objection.

2. The statement of the plaintiff that the ailment of the spine was the result of her injuries was not in the nature of an opinion, but rather an incidental statement of fact, and we are not prepared to say that it was error to admit it, under all the circumstances.

3. Several exceptions were taken to the charge of the court, none of which appear to us to be tenable.

With a correct definition of assault and battery, the question whether one had in fact been committed by the defendant was left to the determination of the jury, together with the ascertainment of its results. There was no evidence tending to show that the plaintiff had committed an assault upon the defendant or his wife that would justify the laying of violent hands upon her, and there was no error in so instructing the jury as matter of law. There was no error in charging the jury that the plaintiff had the right, under the defendant's own evidence, to remove her furniture in a quiet and peaceable manner. She was admitted to the house without objection, on the ground that the defendant was absent. It appears that defendant was readily reached by telephone. Part of the furniture had been taken out in a quiet and peaceable manner, and there is no evidence that the table she was about to remove when he entered, and at the time of the alleged assault, was not her property which she had the right to take away. There was no doubt unfriendly feeling between the parties existed.

Grant that plaintiff's conduct and remarks to defendant's wife may not have been altogether what they should have been, for he says that she was abusing, that is to say, not talking civilly to his wife, yet there was nothing to jusifty the violence with which he is charged. And whether or not he used such violence was left to the determination of the jury. In laying down the measure of damages the jury were limited to the consideration of the pain and suffering of the plaintiff and such expense as was necessarily caused thereby between the time of the alleged assault and the time of trial. No recovery for future damages was permitted. A part of the charge recites: "There is no testimony going to show that she was requested not to come there unless he was present, but upon that there is a conflict of testimony, and that question is for you to determine, to find if he made the request." It is apparent that the insertion of the word "no" in this paragraph is a clerical error, probably of the stenographer, from what follows; and it is clear that the jury could not have been misled by it. The practice pursued in this case of noting exceptions to certain paragraphs of the charge indicated by letters, A, B, etc., on the margin, and thereafter printing the same in capital letters is one not to be commended. Had not the exceptions also contained a reasonably sufficient statement of the grounds thereof without resort to marginal notes and capital type, they would not have been considered.

4. Fourteen special instructions were prayed on behalf of the defendant, and errors have been assigned on their refusal.

Of these it is sufficient to say that some were clearly erroneous conceptions of the law; others had no application to the evidence, and such as had are embodied in the general charge.

Finding no reversible error in the proceedings on the trial, the judgment will be affirmed with costs. It is so ordered.

Affirmed.

To excuse a person for assaulting another under the belief that he is a third person, upon whom an assault would be justified, it is held, in Crabtree v. Dawson (Ky.), 67 L. R. A. 565, that he must exercise the highest degree of care practicable under the circumstances to ascertain whether or not the person whom he is about to strike is in fact the one whom he believes him to be. The question of mistaken identity as justification for assault is the subject of a note to this case.

Taxation—Notice to Owner of Tax Sale.—After sale for delinquent taxes, a notice to the owner of the fee by the purchaser sufficiently complied with the statute, though addressed to him as "mortgagee." Bradley v. Williams (Mich.), 102 N. W. Rep. 625.

Digitized by Google

Court of Appeals of the District of Columbia.

JOHN CHERRY ET AL., APPELLANTS,
v.
ELIZABETH ANN WHALEN.

EQUITY; PAROL AGREEMENT; PART PERFORMANCE; SPECIFIC ENFORCEMENT OF AGREEMENT.

1. Where a parol agreement was entered into between a father and daughter that if the latter would undertake the care of her mother (the wife of the former) for the remainder of her life, the father would purchase certain real estate, taking title in his own name but would enjoy only a life estate therein, and would convey the fee, by will or otherwise, to the daughter, and pursuant to such agreement the property was purchased, the daughter placed in exclusive possession thereof, paying rent to the father, and the daughter fully performed the obligation on her part to care for her mother, such acts constitute sufficient part performance of the parol contract to take it out of the operation of the Statute of Frauds.
2. Where, subsequent to the death of his wife, the father married again, and in violation of the agreement with his daughter conveyed the real estate in question to his second wife, held that equity would compel specific performance of the parol agreement.
3. A decree holding the deed to the second wife void and declaring her to be a trustee of the legal title to the premises during the life of her husband, with remainder in fee to complainant, and directing a conveyance of the property, etc., affirmed.

No. 1499. Decided May 28, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,408, in suit for specific performance of a parol contract relating to land. Affirmed.

Mr. J. B. Archer, Jr., and *Mr. C. H. Merrillat* for the appellants.

Mr. Chas. A. Douglass, Mr. E. S. Douglass, and *Mr. L. H. David* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a degree of the Supreme Court of the District enforcing specific performance of a parol contract relating to land.

The bill was filed on July 12, 1902, by Elizabeth Ann Whalen against John Cherry, Mary Frances Cherry, his wife, and James B. Archer, Jr., trustee. Complainant is the daughter of defendant, John Cherry, and the wife of Mark T. Whalen.

The bill alleges in substance: That until June 1, 1897, complainant and her husband lived in a house known as No. 511 M street southwest, in the city of Washington; that in 1897 Mary Cherry, the wife of John Cherry and mother of complainant, was about seventy years of age, and was enfeebled by age and illness; that she suffered from vertigo and had sustained several attacks of paralysis; that in May, 1897, defendant John Cherry was serving as a night watchman, his employment keeping him from home at night; that he then came to complainant's house and told her that he would be compelled to engage some one to nurse his said wife and see to her care and comfort; that to induce complainant to undertake said care for the remainder of his wife's life, he proposed to purchase certain land and premises, known as sublot 138 in square 546, the house upon which (No. 1322 Four-and-a-half street southwest) adjoined the house then owned and occupied by him, to wit, No. 1324 Four-and-a-half street southwest; that he would take the title in his own name, but would enjoy only a life estate therein, and would convey the remainder thereof, either by will or otherwise, to complainant in fee simple, freed and discharged of incumbrances of every kind and character.

That complainant agreed to said proposition and the contract was then and there mutually agreed to, it being further agreed that complainant should occupy said house during the life of said Cherry, paying a monthly rental of $11 and the water rental in connection therewith. That in pursuance of said agreement the said Cherry purchased the said premises, taking a deed therefor to himself. That in pursuance of said agreement complainant removed from the house on M street to said No. 1322 Four-and-a-half street southwest, and entered upon possession with her family. That complainant then and there undertook and performed each and every part of the agreement on her part. That complainant, from said date until the death of her mother, on April 19, 1900, was constant in her attention to her, caring for her during the said period according to the true intent and meaning of her said agreement. That complainant's said mother required her care and attention during the hours of day and night, and that she rendered the same constantly. That in pursuance of said agreement, defendant Chery, about the — day of September, 1897, executed a will devising said land and premises to complainant, as he had agreed to do, in fee simple, but complainant is advised that he afterwards destroyed said will.

That in March, 1901, defendant Cherry married his co-defendant, then Mary Frances Hilton, and notwithstanding the fulfillment by complainant of her obligations under said agreement with him, on, to wit, July 7, 1902, executed and delivered to James B. Archer, trustee, a deed conveying said land and premises to him in trust, for a nominal consideration of $1, to convey the same in fee simple to his said wife, Mary Frances Cherry. That on the same day the said James B. Archer, Jr., conveyed the said land and premises in fee simple to said Mary Frances Cherry in pursuance of his said trust, and for a nominal consideration of $1. That both of said deeds were duly recorded. That by the execution and delivery of said deeds the defendant Cherry has disabled himself from performing his said agreement with complainant, and she will be injured in her rights and privileges in the future enjoyment of said land and premises through said conveyances, unless an injunction issue restraining the defendants from alienating or incumbering the same. That by the execution of the said deeds defendant Cherry has been guilty of fraud, and complainant is entitled to a decree declaring said Mary Frances Cherry a trustee holding the legal title in trust during the life of said Cherry, with remainder in fee to complainant.

The prayers for relief are in accordance with the allegations of the bill.

The defendants joined in demurrer to said bill on three grounds: First. That it does not appear that the alleged contract was in writing as required by the Statute of Frauds. Second. That the bill shows no performance of the alleged contract authorizing relief in contravention of

Digitized by Google

the Statute of Frauds. Third. That the allegations of the bill show that the complainant has a plain, adequate, and complete remedy at law.

This demurrer having been overruled, defendant Cherry answered under oath, admitting the general facts alleged in the bill, but expressly denying the agreement set out therein, the performance of services as alleged, and the commission of the fraud charged. In respect of the paragraph of the bill charging the execution and destruction of the will made by him in performance of his alleged agreement, he answered as follows: "This defendant is advised that it is not material or necessary to answer whether in September, 1897, or at any other time, he devised the property described in this cause to the complainant, or whether he afterwards destroyed any such will, but he denies that he ever devised said property to the complainant in pursuance of any contract whatever."

The answers of the other defendants were formal.

Testimony having been taken, the court entered a decree declaring the conveyances void in so far as inconsistent with, and in violation of the agreement between complainant and defendant Cherry, which was found to have been entered into as alleged; declaring Mary Frances Cherry to be a trustee of the legal title to the premises during the period of the life of John Cherry, with remainder over in absolute fee simple to complainant, her heirs and assigns forever, freed and discharged of all liens and incumbrances of every kind and character; directing the said Mary Frances Cherry to execute and deliver to the complainant a deed in due form conveying to her the fee simple title to said premises, freed of all encumbrances and subject to a life estate for the life of said John Cherry; and enjoining the defendants from conveying or incumbering said premises in any manner inconsistent with the said agreement between complainant and the said John Cherry. It was further decreed that defendants deliver the immediate possession of said premises to complainant subject to her obligation to pay the said rental of $11 per month, and the water tax thereon, during the lifetime of said John Cherry, and that they pay all the costs of suit.

From this decree the defendants have all appealed.

The demurrer was correctly overruled. The bill describes the premises with precision, and alleges a contract relating thereto that is certain in its terms and founded upon a valuable consideration. The purchase of the premises by the defendant for the occupation of the complainant, her admission into full and exclusive possession in accordance with the terms of the alleged contract, her performance of the entire obligation on her part, constitute sufficient part performance of the parol contract to take it out of the operation of the Statute of Frauds; that is to say, to prevent the statute from being converted into an instrument of fraud.

Peaceable possession alone, entered into under a parol contract to convey land, is generally regarded as sufficient ground for equitable relief, notwithstanding the Statute of Frauds, because, ordinarily, it works a material change in one's plans for the future.

Repudiation of the contract thereafter, followed by eviction as a trespasser or mere occupant at will, would produce conditions of loss and damage the computation of which, by a pecuniary standard, would be largely matter of conjecture. It is this element of uncertainty which justifies resort to the jurisdiction of equity for adequate and complete relief through its power to decree specific performance. In addition to this induction into possession with its ordinary consequences, the obligation of the complainant, which she fully performed, required the rendition of peculiar and delicate services without intermission for a period of nearly three years. Caring for an aged and practically helpless mother required constant acts of help and attention, sometimes of a disagreeable character, performed, too, with the affectionate consideration reasonably to be expected of a child that money is ordinarily powerless to purchase. The law furnishes no certain standard for the compensation of such services by the award of pecuniary damages.

The facts alleged in the bill make a case clearly within the rule governing in this jurisdiction. Whitney v. Hay, 15 App. D. C. 164: 27 Wash. Law Rep. 430; S. C. 181, U. S. 77. The citation of other authority is unnecessary.

The allegations of the bill having been held sufficient, it remains to consider whether they have been sustained by the evidence.

The following facts have been established beyond question: That plaintiff, with her husband and child, occupied a rented house a few blocks distant from the home of defendant Cherry; that this house was suitable as a residence, and was rented for $8 per month; that Mrs. Cherry was about 70 years of age and was subject to attacks of vertigo. Whether she suffered from paralysis is doubtful, but she was infirm, subject to fainting attacks, frequently confined to her bed, and in need of frequent close attention. That she had fallen during one of her attacks and dislocated or seriously injured her hip, and was compelled thereafter to use a crutch. That this condition, beginning before July, 1897, grew worse until her death in April, 1900.

That John Cherry was employed as a night watchman in one of the parks, and was compelled to be absent from his house generally from late in the afternoon until a late hour at night, and necessarily had to have some rest during a part of the day; that the only other occupant of his house was a granddaughter—the daughter of complainant—who was then about twelve years old and a daily attendant at one of the public schools; that the only other daughter of defendant was a married woman with several children, whose husband was in a bad state of health; that complainant for several years between the death of her first husband and her marriage with her present one had lived with her parents, assisting in the household work and doing other things; that prior to July, 1897, a kind-hearted neighbor, Mrs. Nolan, had been a frequent visitor of Mrs. Cherry, nursing and caring for her during her sudden attacks; that Mrs. Nolan removed in the summer of 1897 and was unable to continue her friendly services; that complainant and her husband were poor people, living upon the re-

Digitized by Google

turns of their labor; that the husband was a street car conductor and had to walk to the car barns daily to take out the earliest or one of the earliest trains, and the removal to the new and more expensive place of residence took him further away therefrom; that complainant expended a little money and some labor in repairing and improving the premises. Without regard to the alleged contract, it clearly appears that John Cherry's chief motive at least for purchasing the house was to have complainant near her mother.

Complainant and her husband testified positively to the contract as alleged, and that they removed to and took possession of the new house in accordance with it. They also testified that complainant was constant and kind in nursing her mother and doing most of her house work from the time of entering into possession until the latter's death.

John Cherry positively denied entering into any agreement with complainant beyond that of leasing her the house at a reduced rate. He also denied the performance of any services for his wife beyond some occasional visits and attentions.

Complainant introduced several witnesses, who testified to declarations and admissions of her father tending to prove the existence of the agreement as alleged. Two of these, Mrs. Mary Connelly and Rosella Reeves, testified to statements made by defendant Cherry, to the effect that he had purchased the house for complainant so that she could care for and nurse her mother while he was away from home; that the latter was to care for her mother and to pay $11 per month as rent, which was the amount of monthly dues to the building association; and that the house was to be hers at his death.

These witnesses were neighbors and acquaintances of all the parties, and had no interest whatever in the subject-matter. Several other disinterested and unimpeached witnesses testified to declarations made by defendant Cherry in regard to the transaction. These did not testify to a full statement of the particular contract as did the two before mentioned, and the declarations which some of them recited might well be referred to a general intention to devise the property to his daughter without any actual contract so to do. At the same time they contradict the evidence of defendant, and tend, also, to establish the existence of some agreement or contract obligation to make such a disposition.

Evidence of declarations made by a party is often unreliable and unsatisfactory, and is to be scrutinized with care, but in the very nature of cases of this kind the contract or agreement sought to be established is generally to be inferred from the situation, circumstances, and relations of the parties, supported by evidence of verbal statements. Brown v. Sutton, 129 U. S. 238, 242; Whitney v. Hay, 15 App. D. C. 164, 186: 27 Wash. Law Rep. 430.

We agree with the learned trial justice that the testimony given of the specific agreement is strongly corroborated by the relations and conditions of the parties, by the circumstances surrounding the transaction between them, and by the evidence of the defendant's declarations. Moreover, the defendant's answer admits the execution of a will which would have carried out the agreement to the letter if unrevoked before his death; and notwithstanding his averment that it was not made in compliance with an agreement to that effect, no other satisfactory explanation of its execution at the time alleged is given.

It is contended, on behalf of the appellant, that the induction into the possession of the premises is referable to a contract of lease equally with that alleged in the bill. In this we can not concur. Had the complainant been in possession of the premises under a lease at the time of making the agreement, her possession would undoubtedly be referable thereto, and would not, therefore, constitute an act of part performance of a subsequent parol agreement to make title, that would prevent the operation of the Statute of Frauds. But there is no pretense that such was the fact. The payment of the special monthly rent charge was one of the stipulations of the general agreement, and consistent with it. It was part of the consideration which the complainant was induced to promise. It was considerably more than she was then paying for a suitable house, yet in the condition in which her mother was it was not probable that her special care and attention would be long required; and the defendant's advanced age made it appear probable that the duration of the rent-paying period could not be long. The house cost $2,400, and the fact that complainant, considering her limited means, was willing to give up a suitable and cheaper home and assume the burden of the greater rent charge, as well as the onerous duty of taking care of her mother, is one of the circumstances surrounding the transaction which tends to raise the inference that she acted upon an agreement that she should have a complete title upon the defendant's death. There is some conflict in the evidence as regards the amount and character of the care and attention which the complainant gave to her mother in the performance of her obligation. That she rendered considerable service is clear, and there is nothing tending to show that the mother was not satisfied with it to the last moment of her life. Upon the whole, we agree with the learned justice who rendered the decree that the weight of the evidence establishes the fact that complainant substantially and fairly complied with her undertaking.

Concurring in the conclusions both of law and fact we must affirm the decree entered, with costs. It is so ordered.

Affirmed.

Street Railroads—Rights of Pedestrians at Crossing.—A pedestrian, about to cross a street car track, who sees a car approaching, has no right to assume, of course, that the car will be controlled and the speed slackened. Toohey v. Interurban St. Ry. Co., 92 N. Y. Supp. 427.

Telegraphs and Telephones—Delay in Delivery.—Failure to deliver a telegram within a reasonable time raises the presumption of negligence—Arial v. Western Union Tel. Co. (S. Car.), 50 S. E. Rep. 6.

Digitized by Google

Court of Appeals of the District of Columbia.

SIMON P. W. DREW ET AL., APPELLANTS, v. ANDERSON HOGAN ET AL.

INJUNCTION; FAILURE TO GIVE UNDERTAKING; WAIVER; CONTEMPT.

1. By the terms of Equity Rule 42 of the Supreme Court of this District, which has the force of a statute, it is a condition precedent to the issuance of an injunction or restraining order, in a suit to enjoin the defendants from interfering in any way with the affairs of a local church, that an undertaking be executed and filed.
2. The requirement of the filing of an undertaking is not waived by the defendants merely by their appearing and pleading to the merits, unless, possibly, where it is shown affirmatively that they had knowledge that no undertaking had been executed and filed.
3. A restraining order issued without the requirement of the filing of an undertaking being complied with is inoperative and void; and an order adjudging the defendants in contempt because of their alleged violation of such order and imposing punishment therefor is likewise void.

No. 1513. Decided June 13, 1905.

APPEAL from an order of the Supreme Court of the District of Columbia, in Equity, No. 24,572, adjudging the appellants guilty of a contempt in the violation of an injunction. Reversed.

Mr. Edwin Forrest, Mr. Hugh T. Taggart, and *Mr. A. B. Webb* for the appellants.

Mr. Jackson H. Ralston and *Mr. Thomas L. Jones* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal taken from an order adjudging the appellants guilty of a contempt, which consisted of a violation of certain preliminary restraining orders issued by the court below.

The suit is one originally brought by eight complainants, one of whom was a trustee and six were deacons of the Metropolitan Baptist Church, of Washington, D. C., against one Drew, who had been acting as the temporary pastor of said church, and four others, two of whom were trustees of said church. The original bill states that the complainants as officers are to manage the affairs of the church and have care and control of its property. Most of its averments consist of charges that Drew is unfit to be pastor of the church. That he has joined with others in an attempt to disrupt the church. The bill further alleges that the church has a membership of over one thousand, and asserts that the complainants are entitled to the exclusive charge of the affairs of the church, in the absence of the regular pastor, under the rules and regulations of the Baptist denomination, and that they represent three-fourths of the members of the church. It is alleged that Drew is not a fit person to be pastor of the church. The relief demanded is that the defendants be restrained from in any wise interfering with the affairs of the church and molesting or disturbing the good order and peace thereof, and that the defendant Drew be restrained from entering the church in the capacity of a minister of the gospel, or for any other purpose, and from interfering with the worship of the members of said church.

Upon this bill of complaint the defendant Drew was restrained, as prayed in the bill, until further order, if any, made by the court after hearing, which was fixed for the 1st day of April, 1904.

A few days thereafter leave was given to complainants to file an amended and supplemental bill without discharging or affecting the restraining order. Thereupon an amended and supplemental bill was filed, making the Metropolitan Baptist Church a party complainant, and alleging that Hogan, one of the original complainants, sued in his capacity as trustee of the church. The amended bill then charges that after the issue of the restraining order the defendants were guilty of unseemly conduct, and had invaded the church edifice, using more or less violence; that they undertook to hold a meeting on the evening of the 24th of March; that on the following evening, when a regular church meeting was to be held, the defendants, usurping the functions of the deacons, in an irregular and unlawful manner proceeded to elect Drew pastor for a term of six months. Further unlawful acts are alleged to have been committed by the defendants on the 26th and 29th of March. The relief prayed was that the defendants, their agents and associates, should be perpetually restrained and enjoined from interfering with the affairs of the church or disturbing the good order and peace thereof, and that the defendant Drew be restrained from acting as pastor, save with the permission of the board of deacons.

The answer of the defendants was filed the following day and contains, among other allegations, one setting forth that the complainants had been suspended from office at a meeting of the church held March 25, 1904. It denied that under the usages and customs of the church the deacons had control of the church property and affairs, and alleges that such management was in the body of the church, certain duties being delegated to the board of deacons and board of trustees, which duties were revocable at the will of the church; that the trustees and their successors held the title to the church property for the church, and that the deacons had duties which lay in the direction of church discipline and the spiritual welfare of the members; that both these boards had only power to investigate and report, the final decision being with the body of the church. The answer further gives the defendants' version of the trouble of the church and what occurred on the evening of the 24th of March, and alleges that the complainants represent only a small minority of the members of the church.

It is unnecessary at this time to set forth the averments of the affidavits submitted for the consideration of the court at the hearing of the order to show cause on April 4. It appears, however, that an affidavit presented on behalf of the defendants purports to have been executed by some four hundred members of the church. At the conclusion of the hearing the court continued the restraining order against Drew and restrained the defendants, Howard, Robinson, and Chapman, from in any wise interfering with the affairs of the church so as to

Digitized by Google

molest the good order and peace thereof. A further order was made directing the board of deacons to call a meeting of the church for the purpose of extending a call to some person as pastor, and directed that all the members of the church should proceed to vote upon the names presented by the board of deacons, and providing that either party might apply for the appointment of three disinterested Baptist ministers of the District of Columbia, under whose direction the meeting was to be held.

We are not called upon at this time to consider any matter but that of the order adjudging the defendants in contempt, and have made reference to the general prior proceedings in the suit in order to consider more intelligently the question before us. It seems to us, however, that the controversy is one of those unfortunate and unseemly church quarrels, which too often arise and which the courts should have as little to do with as possible. It appears to us that there is a serious question whether the complainants are in a position to maintain their bill. So far as appears no authority was given them to bring the suit or to join the church as a party complainant, and the deacons do not appear, under the form of government applicable to Baptist churches, to be clothed with any power over the temporal affairs of such a church, and that if there be any authority in either the deacons or the trustees to control the church building, it seems to be with the trustees, only one of whom appears as a party complainant. There is much to show that the complainants do not represent a majority of the church members. Both parties recognize Hiscox and his work on church government as an authority as to the forms of government practiced among the various christian denominations. Hiscox classes the Baptists under the head of the "Independent" in which the governing power rests entirely with the people, i. e., the body of the members of each local church, each being entirely separate from and independent of all others so far as authority and control are concerned. He further says: "Baptists assert that each individual church is self-governing and independent of all other churches or bodies whatever as to the administration of its own affairs." He states that the deacons have charge of the sick and needy members and act as counselors and assistants to the pastor and, in the absence of the pastor, conduct the devotional meetings, etc. He states that they have no authoritative or dictatorial control over church affairs. Of the trustees, he says, that they should hold themselves bound by every consideration of morality to carry out the wishes of the church and to act under their instructions. As stated, it appears that the church had a membership of over one thousand, and it does not appear that any meeting of the church was ever held authorizing the commencement of the suit, and without such order the authority of the complainants to maintain this suit would be extremely questionable. In the leading case of Watson v. Jones, 80 U. S. 679, the court, in referring to the questions coming before the civil courts concerning the right to property held by ecclesiastical bodies, enumerates three classes of questions which came before the civil courts for consideration. One class embraces churches which are, as the court says, of "a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such other organism as it may have instituted for the purpose of ecclesiastical government. . . . If the principle of government in such cases is that the majority rules, then a numerical majority of members must control the right to the use of the property."

It would seem that in the consideration of the question of where the power of control over the use of the church proper is lodged it rests with the congregation and not with the deacons. If any church board has control over the church property, it would be the trustees.

After the restraining order was continued against Drew and extended to the defendants, Howard, Robinson, and Chapman, an order was issued by the court, on May 21, 1904, directing the defendants and others to show cause why they should not be adjudged guilty of contempt of the orders of the court theretofore passed. The order was made returnable May 25, but there was no hearing until October 19, when the matter was heard upon the motion and supporting affidavits, the answers thereto, and affidavits in support thereof, and upon certain testimony given in open court. After such hearing the court adjudged the defendants Drew, Robinson, and Howard guilty, and sentenced Drew to imprisonment for a period of sixty days, and Robinson and Howard for the term of thirty days each. An appeal having been duly taken, the case came on for argument before us. It was heard upon the oral argument and brief filed on behalf of the appellants. No argument was made or brief filed for the appellees. In view of the conclusion at which we have arrived, it is unnecessary to determine whether the court arrived at a correct conclusion in determining upon the facts that the defendants were guilty of a violation of the injunction. We have, however read the testimony and find that it is very conflicting, but we are not as favorably placed as was the trial court to determine the facts, for the reason that some of the parties were examined in open court. We should be inclined to follow the court below on all questions of fact relating to the alleged violation of the restraining orders, were it necessary to consider them.

It is well settled that the United States courts have no power to punish a party for contempt for disobeying an order made without jurisdiction. Ex parte Fiske, 113 U. S. 113. In re Ayres, 123 U. S. 443, 485. Both of these cases have been cited many times with approval.

Objection to the jurisdiction of the court to pass the judgment and sentence was presented to the court below and forcibly urged before us. It is only necessary to refer to the objection, which we consider to be controlling. Equity 42 of the Supreme Court of the District declares that:

"Except when an injunction is to stay proceedings in an ordinary suit at law, or is against a judgment debtor who is made a defendant to a creditor's bill, no injunction or restraining order shall be issued except upon the precedent

Digitized by Google

condition that the complainant execute and file in the case (with surety or sureties, if deemed necessary by the justice, and to be approved by him) an undertaking to make good to the defendant all damages by him suffered or sustained by reason of wrongfully and inequitably suing out the injunction, and stipulating that the damages may be ascertained in such manner as the justice shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction."

It appears that the court issued the restraining order of March 26, and continued it under the order of April 4, without requiring the filing of an undertaking, and it is therefore urged that these orders were inoperative and void by reason of the failure to require that an undertaking be filed. We think this point is well taken. By the terms of the rule it is made a condition precedent to the issuance of an injunction or restraining order, in a suit of this character, that an undertaking be executed and filed. This rule is binding upon the judge granting the injunction or restraining order and he has no right to waive the requirement. It is true that this protection is for the defendant and is for his benefit, and doubtless a party defendant may waive the requirement. We do not think, however, that this requirement is one that is waived merely by appearing and pleading to the merits, unless, possibly, where it is affirmatively shown that the defendant had knowledge that no undertaking had been executed and filed. The original order in this case was granted ex parte and the defendant had the right to presume that the court had obeyed its own rules. Parties to suits and their attorneys are justified in presuming that a court will not violate its own rules. Encyclopædia of Pleadings and Practice, vol. 18, p. 1265. In Wall v. Wall, Har. & G. (Maryland) 79, it was held that courts have no dispensing power over their rules and long established practice, and that a party to whose prejudice an innovation upon a rule of a court is made has a right to seek redress in the appellate court. This doctrine was recognized and affirmed in Abercrombie v. Riddle, 3 Maryland Chancery, 320, 325.

The statutes of nearly all of the States provide that no injunction or restraining order shall be granted until an undertaking has been executed and filed in the cause. The courts have uniformly, though perhaps not universally, held that this requirement is a condition precedent and can not be waived by the court, and that there is no presumption of a waiver by a party defendant; that any waiver must be proved and not presumed.

Rule 42, in our opinion, has the force of a statute. A duly authorized rule undoubtedy has the force of law, and is binding upon the court as well as upon parties to an action, and can not be dispensed with to suit the circumstances of any particular case. "The courts may rescind or repeal their rules without doubt, or, in establishing them, may reserve the exercise of discretion for particular cases, but the rule once made without any such qualification must be applied to all cases which come within it until it is repealed by the authority which made it." Thompson v. Hatch, 3 Pick. 512. This rule was quoted with approval in Rio Grande, &c., Co. v. Gildersleeve, 174 U. S. 603, where it was held that a rule of the Supreme Court of New Mexico, fixing the time in which motions could be made to set aside judgments, had the force of law, and could not be disregarded by a trial judge to whom no discretion was left.

We do not think the rule in question is analogous to a rule of a court requiring a nonresident plaintiff to give security for costs. Such a rule is not generally recognized as a condition precedent to bringing a suit and in most jurisdictions little or no attention is paid to it unless the defendant notifies the plaintiff to file the security, or files a motion for an order requiring such security to be given. In the former case it is made the duty of the court, as we read the rule, to see that the necessary undertaking is executed and filed, and it has been held that a defendant is not in contempt in refusing to obey an injunction until the undertaking has been given in any case in which it is required. Lamon v. McKee, 18 D. C. 446. As we understand the facts in the present case, the court itself in granting the restraining order nullified the rule by expressly providing that no undertaking be given. It would seem to us to be the plain duty of the court, in granting an injunction, to see that the rule requiring that an undertaking be executed be complied with so that in case of violation of the injunction the defendant could be punished. It is important to the due administration of justice that all proceedings over which the court has special control be regular so that no opportunity be given a party to successfully evade the orders made by the court.

We do not think the defendants by appearing and answering waived their right to raise the objection that the court was without jurisdiction to grant the injunction, having released the complainants from the express requirement of the rule that they execute and file a bond. Whenever it came to their knowledge that the requirement of Rule 42 had not been obeyed, they could avail themselves of the objection. There is no proof that they had any knowledge that the bond had not been executed and filed until the time when the question was first raised. Putting aside the question whether these complainants have any standing in court, we are of the opinion that the defendants were not in contempt in refusing to obey the injunction for the reason that the undertaking required by Rule 42 had not been executed and filed at the time when required, or at any later date.

It follows that the order of October 20, 1904, adjudging Simon P. W. Drew, George Robinson, and William Howard in contempt and imposing punishment therefor is void, and should be reversed with costs, and the case remanded with directions to proceed in conformity with this opinion.

Seduction—Artifices.—A combination of flattery, love making, and hypnotism held a sufficient predicate for a prosecution for seduction.—State v. Donovan (Iowa), 102 N. W. Rep. 791.

Digitized by Google

Marriage—Payment of Debt.

In Weld v. Weld, recently decided by the Supreme Court of Kansas (81 Pac. 182), it appeared that Judith R. Kidder executed and delivered to Augustus Weld her note for a sum of money, and secured its payment by a mortgage upon her real estate. Subsequently she married him in consideration of his parol agreement that the marriage should operate as a satisfaction of the note. After the marriage, however, he brought an action against her to recover on the note and to foreclose the mortgage. She pleaded payment, and the jury having found that the marriage had been performed in consideration of the agreement referred to, judgment was rendered for the defendant. On behalf of the plaintiff it was urged that the contract, being oral, was within the Statute of Frauds, and that marriage was not a sufficient consideration to remove the bar. In disposing of this objection, and in affirming the judgment for defendant, the Supreme Court said:

"It is true the Statute of Frauds provides that no action shall be brought to charge any person upon any agreement made upon consideration of marriage, unless the agreement upon which the action is brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him or her lawfully authorized. Gen. St. 1901, sec. 3174.

"It is likewise true that authorities may be found to the effect that generally marriage is not a sufficient part performance to avoid the effect of the statute. But there is no question of part performance in this case. The contract was fully executed when the defendant married the plaintiff. Nothing further was to be done by either party to satisfy her obligation. The agreement was not that the plaintiff would, after marriage, deliver money or property or securities to the defendant in consideration of the marriage, or that he would after marriage execute and deliver to her legal documents affecting her property rights. It simply was that the debt should be paid when they were married. . . . The Statute of Frauds does not render void the verbal contracts to which it refers. They are valid for all purposes except that of suit. Stout v. Ennis, 28 Can. 713. The parties may, if they desire, perform them, and, when performed, the statute has no application to them. 29 A. and. E. Encycl. of L., 829, 941."

Bankruptcy—Mortgage Lien on After Acquired Property.—Trustee in bankruptcy held to have no greater rights against bankrupt's chattel mortgagee, taking possession of after-acquired property under the mortgage, because of an attachment and second chattel mortgage, both dissolved by the bankruptcy proceedings. Thompson v. Fairbanks, U. S. S. C., 25 Sup. Ct. Rep. 306.

Trial—Reopening Case After Granting Nonsuit.—After plaintiff has closed, and the court has announced that a motion for nonsuit will be sustained, it is discretionary with the court to allow plaintiff to reopen the case to introduce additional testimony.—Brooke v. Lowe (Ga.), 50 S. E. Rep. 146.

Specific Performance—Defect of Title.—Specific performance will not be denied a vendor on the ground that there are apparent defects in his title, where the evidence shows such defects to be dormant and of no validity against the property—Gibson v. Brown (Ill.), 73 N. E. Rep. 578.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Geo. S. Rees, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Bernard Landwer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of August, 1905. MARIA GERTRUDE LANDWER, 1582 Kingman Place, N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,041. Administration. 31-3t

Bendheim & Rothschild, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of William L. Elterich, Deceased.
No. 13,090. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Augusta Elterich, it is ordered this 3d day of August, A. D. 1905, that notice be and hereby is given to **William O. Elterich**, and to all others concerned, to appear in said court on **Wednesday, the 6th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: M. J Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-3t

J. J. Waters, Attorney for Applicants
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In Re Estate of Stanley Pearce, Deceased. No. 13,062.
Administration Docket 34.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by George Pimper and Henry F. Kunkel, otherwise Henry Conkle, it is ordered this 3d day of August, A. D. 1905, that notice be and hereby is given to **Ellen Harris and Lottie Pendle, otherwise Lottie Penhale**, and to all others concerned, to appear in said court on **Tuesday, the 5th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and in The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: JOB BARNARD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-3t

Digitized by Google

Legal Notices.

G. X. McLanahan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, ancillary letters testamentary on the estate of **George C. Anderson**, late of the State of New York, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of August, 1905. JOSEPH R. LOTT, No. 115 N. Y. ave. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,080. Administration. 31-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Maria W. Richards, Deceased.
No. 13,089. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Charles H. Richards, as executor, it is ordered this 3d day of August, A. D. 1905, that notice be and hereby is given to **Edmund C. Parker**, of Guide Rock, Nebraska; **Edmund C. Parker**, of Stoughton, Massachusetts; **Fred Parker, Helen M. Parker, Lucy P. Greene, John A. Parker, Mrs. Nathaniel B. Sherman, Gustavus Parker, George Parker, I. Frank Parker, John K. Parker, and Lizzie Lyman Parker**, and to all others concerned, to appear in said court on **Tuesday, the 5th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary Knox Linn, Deceased.
No. 13,001. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William S. Knox and The American Security and Trust Co., executors, it is ordered this 28th day of July, A. D. 1905, that notice be and hereby is given to **William Linn**, Philadelphia, Pa., and to all others concerned, to appear in said court on **Tuesday, the 12th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice is published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-3t

H. Prescott Gatley, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **James Wallace Green**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 21st day of August, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of July, 1905. MAGGIE GREEN, by H. Prescott Gatley, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,214. Administration. 31-3t

Legal Notices.

Harry G. Kimball, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **William H. Kaiser**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of August, 1905. HARRY G. KIMBALL, 416 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,075. Administration. 31-3t

Grahame H. Powell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Linguist**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of August, 1905. GRAHAME H. POWELL, 1744 G st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,085. Administration. 31-3t

E. H. Jackson, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Seratus Heist, Deceased.
No. 13,052.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Virgil B. Jackson, it is ordered this 2d day of August, A. D. 1905, that notice be and hereby is given to **Lizzie J. Schoot**, and to all others concerned, to appear in said court on **Monday, the 11th day of September, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. A true copy. Attest: M. J. Griffith, Deputy Register of Wills. 31-3t

Wm. H. Baden, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Israel E. Kirk**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of August, 1905. AUGUST DONATH, Bureau of Pensions. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,963. Administration. 31-3t

Pennebaker & Jones, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John C. Barnet**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of August, 1905. JOHN PAUL JONES, 1331 F st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,081. Administration. 31-3t

Digitized by Google

Legal Notices.

Wm. L. Ford, Attorney

Notice is Hereby Given That on the 29th day of July, 1905, a petition was filed in the Supreme Court of the District of Columbia, by the **Bond Investment Company**, a corporation created and existing under the laws of the United States applicable to the District of Columbia, stating that said company has abandoned the plan or business of having its stock guaranteed by the bonds of a certain insurance company and is now engaged exclusively in the purchase and sale of grain, that its present name is inapplicable to the business now conducted by the petitioner, and that the stockholders of the company at a special meeting in June, 1905, and the board of trustees in July, 1905, resolved to change the company's name to "**The Lakes Grain Company;**" and the prayer of the petition is for such change. BOND INVESTMENT COMPANY, by George F. Cram, President. 31-3t

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary L. Reddick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of July, 1905. PHILIP STEWART, 117 D st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,855. Administration. 31-3t

Jno. R. Shield, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a on the estate of **Bridget Reardon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or be ore the **31st day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1905. JAMES A. TOOMEY, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,611. Administration. 31-3t

Alex. R. Mullowny, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Frank W. Godden**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1905. RUDOLPH KAUFFMANN, Evening Star Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,741. Administration. 31-3t

SECOND INSERTION.

Bates Warren and Wm. L. Browning, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph Thomas Bender**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1905. HARRY FRANKLIN BENDER, 19 Barclay st., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,064. Administration. 30-3t

Legal Notices.

Robt. E. L. White, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Engelbert Endres**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th daiy of July, 1905. JANE ENDRES, Tennallytown, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,056. Administration. 30-3t

Irving Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Elizabeth Behrens Kenny**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **27th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of July, 1905. JOHN W. PILLING, 1416 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,832. Administration. 30-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Wiggins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of July, 1905. J. HARRY WATERS, Laurel, Md.; JOHN W. FARRAR, 1303 3d st. N. W., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,036. Adm. 30-3t

F. H. Stephens, Solicitor

In the Supreme Court of the District of Columbia.
John H. von Dohlen et al. v. Dora Hannemann et al.
Equity, No. 23,367.

Upon hearing the report of Luther L. Apple, trustee, stating that he has sold lots seventy-three (73) and seventy-four (74) in Eugene McC. Wardwell et al.'s subdivision of part of Pleasant Plains, as described in the original bill filed in this cause, to John B. Daish for the sum of twenty-nine hundred dollars ($2,900.00), it is, this 27th day of July, 1905, ordered, adjudged, and decreed that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the **28th day of August, 1905**. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter prior to said date. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-3t

Irwin B. Linton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sarah Guffin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of July, 1905. SUSAN A. GUFFIN, HARRIET C. GUFFIN, 1938 First st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,988. Administration. 30-3t

Digitized by Google

Legal Notices.

L. C. Williamson, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In the Matter of the Estate of Wilson Gregory, deceased. Administration. No. 12,948.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, by Frances G. Gregory, it is ordered this 24th day of July, A. D. 1905, that notice be and is hereby given to **Anna Gregory Carl, Margaret Gregory Taylor, William H. Gregory, Mary Gordon, Phoebe Oliver, Edward F. Brooks, Mary Brooks, Lula Brooks, Katie Brooks, Webster Stauffer, Mary Myrtle Ranck, Walter Stauffer, Drew Stauffer, Mabel Brooks,** and all others concerned, to appear in said court on the **28th day of August, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and the Washington Times once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills 30-3t

Alfred B. Lind, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel E. Loving,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1905. LUCY D. LOVING, 13 L st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,959. Administration. 30-3t

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frank L. Hanvey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of July, 1905. WALTER H. ACKER, 1420 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,061. Administration. 30-3t

Wolf & Rosenberg, Solicitors

In the Supreme Court of the District of Columbia.
T. Edward Clark, Complainant, v. Herman M. Schriener and Lucila Schriener, Defendants.
Equity No. 25,386.

Alexander Wolf and Percy Metzger, trustees, having reported to the court that they have sold the real estate beginning at a point on the south line of North S street at a distance of sixty-three and thirty-three hundredths (63.33) feet from Vermont avenue; thence running with the south line of north S street west forty-nine and ninety-one hundredths (49.91) feet; thence south sixteen and sixty-nine hundredths (16.69) feet; thence southeasterly and perpendicularly to the line of Vermont avenue fifty-four and eighty-three hundredths (54.83) feet; thence north thirty-nine and forty hundredths (39.40) feet to the beginning, containing thirteen hundred and ninety-nine and seventy-three hundredths (1399.73) square feet of land with improvements thereon, for the sum of seventeen hundred dollars ($1,700), subject to an incumbrance of three thousand dollars ($3,000), it is, this 27th day of July, A. D. 1905, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **21st day of August, 1905.** Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter prior to said date. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-3t

Legal Notices.

THIRD INSERTION.

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold lots one hundred and fourteen (114) to one hundred and twenty (120), both inclusive, in square five hundred and fifty-one (551), being Nos. 105 to 107 Reaves Court, to Cynthia E. Dowell for fifty-six hundred dollars ($5,600), cash, it is by the court this 18th day of July, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **18th day of August, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

Fountain Peyton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ida Larkins,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. MARY THOMAS, 1107 ½ st. Court N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,044. Administration. 29-3t

Nelson Wilson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Massachusetts, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Otis B. Bullard,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. HENRY M. CUTLER, Holliston, Mass. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,965. Administration. 29-3t

Victor H. Wallace, Solicitor

In the Supreme Court of the District of Columbia.
Inez L. Rosenbaum v. Richard W. Rosenbaum and Rose Illman. Equity. No. 25,131.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 12th day of July, A. D. 1905, ordered that the defendants, **Richard W. Rosenbaum and Rose Illman,** cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law Reporter and The Washington Times. By the Court. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

C. Clinton James, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John H. Richardson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1905. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,061. Administration. 29-3t

Digitized by Google

Legal Notices

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Luella H. Bush**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers there of legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. CLARA R. BUSH, 1537 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,046. Administration. 29-3t

---

Edward S. Moores, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ebenezer W. Patton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of May, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. JOHN R. BERG, 319 F st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,912. Administration. 29-3t

---

R. R. Horner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of David Lee, Deceased.

No. 13,060. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia I. Davis, it is ordered this 17th day of July, A. D. 1905, that notice be and hereby is given to **all the heirs at law, unknown, and next of kin**, and all others claiming interest in his estate, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

In the Supreme Court of the District of Columbia.

Harry M. Packard, Complainant, v. William Brown et al., Defendants. No. 24,604. In Equity. Doc. 55.

Ralph P. Barnard, trustee, having reported to the court the sale of the real estate involved in the above entitled cause, and being, to wit, lot one (1) in block twenty-five (25) of John Sherman, trustee's, subdivision of part of "Mount Pleasant" and "Pleasant Plains," now known as Columbia Heights (with the exception of the east 26.84 feet front by the full depth thereof of the said lot taken by the District of Columbia in the extension of Eleventh street), as per plat of said subdivision as the same appears of record in the office of the surveyor for said District, in book Governor Shepherd's, at page 137, said lot being unimproved, to Ernest L. Schmidt for the sum of eleven hundred dollars ($1,100.00), and the purchaser having tendered himself ready to comply with the terms of sale. It is by the court, this 17th day of July, A. D. 1905, ordered that upon compliance with the terms of sale, the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **17th day of August, 1905**. Provided a copy of this order be published once a week for three successive weeks before said day in The Washington Law Reporter. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Legal Notices.

H. Anton Heitmuller, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charlotte Hasselbusch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1905. WM. HASSELBUSCH, 20 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,048. Administration. 29-3t

---

Stuart McNamara, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Benjamin T. Rhodes, Deceased.

No. 12,979. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Josephine Rhodes, it is ordered this 18th day of July, A. D. 1905, that notice be and hereby is given to **Alice I. Williams**, of Deruyter, Madison Co., New York, and to all others concerned, to appear in said court on **Tuesday, the 22d day of August, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

---

J. Clarence Price, Attorney

In the Supreme Court of the District of Columbia,

Holding a Probate Court.

In Re the Estate of Agnes M. Beuchert, Deceased.

No. 12,867.

Upon consideration of the report of John A. Ruppert and Lena Beuchert, executor and executrix, respectively, of said estate, stating that they sold at public auction sublot one hundred and twenty-six (126), in square eight hundred and sixty-one (861), in the city of Washington, District of Columbia, to Zula H. and Richard W. Burkhart for the sum of three thousand six hundred and twenty-five ($3 625.00) dollars, and also that they sold sublot numbered five (5), in square numbered nine hundred (900), in said city, to Mary Buhler for the sum of three thousand four hundred and fifty ($3,450.00) dollars, it is, by the court, this 18th day of July, 1905, adjudged, ordered, and decreed that said sales, and each of them, be ratified and confirmed, unless cause to the contrary be shown on or before the **25th day of August, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 29-3t

---

Malcolm Hufty, Solicitor

In the Supreme Court of the District of Columbia.

Lawrence Hufty, Complainant, v. The Unknown Heirs, Devisees, or Alienees of John Law, Defendants. Equity. No. 25,506.

The object of this suit is to declare the title of the complainant to original lot one (1), in square seven hundred and sixty-eight (768), in the city of Washington, District of Columbia, to be good in fee simple in the complainant by reason of adverse possession. On motion of complainant, by Malcolm Hufty, his solicitor, it is, by the court, this 19th day of July, 1905, ordered that the defendants, **the unknown heirs, devisees, or alienees of John Law**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court, otherwise this cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter once a week for three successive weeks before said return ay. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

Digitized by Google

Legal Notices.

In the Supreme Court of the District of Columbia.

Sarah E. Frankland et al. v. Richard Frankland.

Equity, No. 25,045.

George C. Aukam, trustee, having reported to the court the sale of real estate known as part of lot 11 in square 403 in the city of Washington, District of Columbia, with the improvements thereon, being premises number 916 8th street northwest, in said city, and being the real estate mentioned and described in the bill of complaint filed in the above entitled cause, to Robert V. White for the sum of five thousand and thirty dollars ($5,030.00), it is by the court, this 14th day of July, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary thereof be shown in this court on or before the **20th day of August, 1905**: provided a copy of this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter and The Evening Star. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

---

Sidney F. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Anna J. King**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1905. A. VIRGINIA CHESSMAN, 1829 N. Gratz st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,926. Administration. 29-3t

---

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.

John Shrughrue et al., Complainants, v. Rudolph Pfeil et al., Defendants. Equity. No. 25,894.

On motion of complainants, by Lester & Price, their attorneys, it is, this 14th day of July, 1905, ordered that the defendant, **Rudolph Pfeil**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. The object of this suit is to have appointed trustees in the place and stead of Henry Jordan and John W. Schaefer, both deceased, to execute the powers created and vested in said deceased trustees by a certain deed of trust, recorded in liber 1581, folio 410, of the land records of the District of Columbia. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 29-3t

---

F. L. Siddons, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Special Term for Equity Business.

Elizabeth B. Hallman, v. Ellwood L. Hallman and Emma La Rue, Alias Emma Harvey. Equity Number 25,465. Docket 56.

ORDER OF PUBLICATION.

The object of this suit is to procure a dissolution of the bonds of marriage existing between the complainant and defendant Ellwood L. Hallman on the ground of alleged adultery by said defendant. On motion of the complainant, it is this 19th day of July, A. D. 1905, ordered that the defendants, **Ellwood L. Hallman and Emma La Rue, alias Emma Harvey**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, a newspaper published in the city of Washington, before said fortieth day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 29-3t

---

Justice blanks of every description for sale at this office.

Legal Notices.

FOURTH INSERTION.

J. B. Larner, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

John Welsh, Complainant, v. The Unknown Heirs, Alienees, or Devisees of Andrew Link, Deceased, Defendants. Equity. No. 25,428.

The object of this suit is to quiet the title of the complainant to lot numbered thirty-three (33) in Andrew J. Miller's subdivision of lots in square numbered eighty-four (84), as per plat recorded in the office of the surveyor of the District of Columbia, in liber 20 at folio 48. Upon motion of the complainant, by his solicitor, it is this 12th day of July, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Andrew Link, deceased, cause their appearance to be entered herein on or before the first rule day of **September, 1905**, otherwise the case will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based on the bill filed herein, that further publication is unnecessary. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 28-4t

---

FIFTH INSERTION.

Hallam & Hallam, Solicitors

In the Supreme Court of the District of Columbia.

Calvin Tibbs, Complainant, v. James Bennett's Unknown Heirs, Defendants.

Equity. No. 25,219. Doc. No 56.

The object of this suit is to declare the title of complainant to lot two (2) in square five hundred and ninety-nine (599), in the city of Washington, District of Columbia, to be good in fee simple by adverse possession. On motion of the complainant, it is this 29th day of May, A. D. 1905, ordered that the defendants, **the unknown heirs, devisees, and alienees of James Bennett**, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. J 2-9, J 7-14, a 4-11

SIXTH INSERTION.

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.

Thomas S. Evans, Complainant v. David Peter et al., Defendants. Equity, No. 25,299.

The object of this suit is to perfect the title of complainant to part of lot nine, square number one hundred and forty-one, in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said lot, and running thence north 28 feet 6 inches to the center of the dividing wall between two frame houses on said lot, thence east 115 feet 6 inches, thence south 28 feet 6 inches to the south line of said lot, thence west 115 feet 6 inches to place of beginning. On motion of the complainant, it is this 23d day of May ordered that the defendants, **David Peter, Thomas Peter, Robert Peter, Jr., Trustees; John Brown, John Innis Clark, —— Brown, —— Ives, George Gibbs, Walter Channing, Samuel Elam, William Cook, James McHenry, Robert Oliver, William Hindman, John McHenry, Anna Boyd, and Ramsey McHenry**, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, if they be living; and that the unknown heirs, devisees, and alienees of such of them who are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order, otherwise this cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks prior to said first return day, and twice a month for three successive months prior to the said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. may 26; June 2-9; July 7-14; aug. 4-11

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 32

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - - AUGUST 11, 1905

CONTENTS.

Editorial 497
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
William L. Jones, appellant, v. Delia J. Rutherford, executrix, etc. 498
Albert Fields, plaintiff in error, v. The District of Columbia 501
Harry G. Wilson, plaintiff in error, v. The District of Columbia 502
Charles W. Critchfield et al., appellants, v. George J. Easterday, executor, etc., et al. 504
Legal Notices 507

Death of Judge Andrew Wylie.

Judge Andrew Wylie, who, prior to his retirement in 1885, served for twenty-three years on the bench of the Supreme Court of this District, died at his residence in this city on Tuesday, August 1, 1905, at the advanced age of 91 years. Judge Wylie was born in Washington County, Pa., in February, 1814. After his admission to the bar, in 1837, he practiced law in Pittsburg until his removal in 1848 to Alexandria, Va., when he opened an office in this city. He was appointed by President Lincoln as a member of the Supreme Court of this District in 1863, and during the twenty-three years of his service on its bench achieved a remarkable reputation as a judge and came to be recognized as one of the leading jurists of his day. He presided at the trial of the "star route" cases, and in many other of the most important cases decided by the courts of this District. He was utterly fearless in the discharge of his duty as a judge, and it is related of him that in the "star route" cases he imposed a fine of $1,000 on Col. Robert G. Ingersoll, the leading counsel for the defense, for contempt of court in asking and securing an answer to a question that had previously been ruled out by the court. His knowledge of the law was profound, and it is stated that no decision of his was ever reversed by the Supreme Court of the United States. Judge Wylie was held in the highest esteem by all who were privileged to know him, as well as by those familiar with the service rendered by him on the District bench.

Ecclesiastical Controversies.

It is not often that ecclesiastical controversies get into the courts, and it is perhaps well that this is so. In the case of Drew et al. v. Hogan et al., reported in our last issue, an interesting question relating to the government of local Baptist churches was raised, though its decision was not necessary to the determination of the question presented by the appeal. It was contended on behalf of the complainants that the affairs of the church were vested in the hands of the deacons' and trustees' boards, there being no regular pastor in charge, to the practical exclusion of the rest of the congregation, but this contention was denied by the defendants. The brief on behalf of the appellants (defendants below), which was in large measure prepared by Mr. Hugh T. Taggart, the leading counsel, contains an elaborate discussion of the question, and while, as stated, the determination of this question was not necessary to the decision of the case, the opinion of the Court of Appeals intimates a conclusion favorable to the contention of the appellants. Those interested in church controversies, especially among denominations of the democratic polity of the Baptists, will find the brief an able contribution upon a subject which has been a vexatious one for the courts.

The Court of Appeals of New York, in the case of Viemeister v. White, 72 Northeastern Reporter 97, rules that courts will take judicial notice of the fact that it is a common belief of the people of the State that vaccination is a preventive of smallpox, and that, this being the case, the public health law, excluding children not vaccinated from the public schools, is enacted within the reasonable exercise of the police power of the State, and that it is not a violation of that provision of the State constitution which provides for free common schools wherein all children of the State may be educated, nor is it a violation of that provision of the State constitution which guarantees to every citizen the protection of his rights, privileges, and liberty.

A park regulation to the effect that no person shall ride or drive at a rate of speed exceeding eight miles an hour is held by the Massachusetts court in Commonwealth v. Crowninshield, 72 Northeastern Reporter, 963, to be sufficiently definite to support a criminal prosecution for operating an automobile at an excessive rate of speed on the ground that the person who is controlling the motive power of the machine must be said to be "driving" it.

Digitized by Google

Court of Appeals of the District of Columbia.

WILLIAM L. JONES, APPELLANT,

v.

DELIA J. RUTHERFORD, EXECUTRIX, ETC.

SERVICE BY PUBLICATION; EQUITABLE LIEN; TREASURY DRAFT.

An agreement between a party having a claim against the United States and an attorney provided for prosecution thereof by the latter, giving the attorney a compensation of one-third the amount allowed, payment of which was expressly made a lien upon the claim and upon any draft, etc., drawn in payment thereof. *Held*, that a draft drawn in favor of the claimant in payment of the claim is personal property within the District of Columbia, within the meaning of section 105 Code, D. C., so as to authorize service by publication upon the non-resident claimant in a proceeding by the personal representative of the attorney for an injunction to restrain the claimant from receiving and the Treasurer of the United States from delivering any draft or warrant on account of the claim, for a receiver to receive such draft, and to have an equitable lien declared upon such draft and its proceeds in favor of complainant.

No. 1558. Decided June 13, 1905.

APPEAL (specially allowed) from a decree pro confesso of the Supreme Court of the District of Columbia, in Equity, No. 24,666, entered upon service by publication. Affirmed.

Mr. A. A. Birney for the appellant.

Mr. Chas. C. Tucker for the appellee.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a special appeal allowed from a decree pro confesso rendered by the Supreme Court of the District, based upon service of process by publication.

The suit is one in equity for an injunction and receiver, and to enforce a specific equitable lien, and it arises from the following facts: The steamboats Champion and Robert Campbell were destroyed at Memphis, on the Mississippi River, in the year 1863 during our civil war, while in the service of the Government of the United States, into which they had been forcibly impressed. The Eureka Insurance Company of Pittsburgh, in the State of Pennsylvania, had an insurance upon them, for which, in 1883, it made claim against the United States. That company then, however, had only a theoretical existence. It had practically passed away before that time, having previously made an assignment of all its property rights and effects to the appellant, William L. Jones, who was designated as its receiver, although he seems to have received his appointment, not from the action of any court, but from the voluntary act of the shareholders of the company, who, indeed, would appear to have abandoned the affairs of the company to him. In 1883 Jones, as receiver of the company, contracted with Gen. Allan Rutherford, formerly third auditor of the Treasury, and then a practicing lawyer in this city, to prosecute his claim, as receiver of the company, against the United States for the loss of the two steamboats, and agreed to give him as compensation for his professional services in such prosecution a sum equal to one-third of the amount that might be allowed upon the claim, the payment of which was in express terms made a lien upon the claim and upon any draft, money, or evidence of indebtedness that might be paid or issued therefor, and it was stipulated that this agreement for compensation was not to be affected by any services performed by the claimant himself, or by any other attorneys employed by him.

By the efforts of Rutherford an allowance of $5,000 on account of the steamboat Champion was made by the accounting officers of the Treasury Department on December 20, 1884, of which Jones was duly notified, and for which he wrote his acknowledgment to Rutherford; but an appropriation by Congress for its payment was needed. This the Congress refused to make. Subsequently the claim, with other similar claims, was referred back to the accounting officers of the Treasury for reexamination, and it was by them disallowed. Nothing seems to have been done thereafter in the matter for several years, and there is some indication that Rutherford abandoned the claim as hopeless. But it appears to have been revived in 1903. In that year Jones contracted with another attorney to collect the amount for him for a compensation of 50 per centum of the claim; and thereafter Congress was induced to appropriate $5,000 in payment of the amount of the claim. This was by an act of April 27, 1904.

In the mean time Allan Rutherford had died and the appellee had qualified as executrix under his will. The appellant, as she alleges, having ignored her and the rights of Rutherford's estate, she instituted the present proceedings by filing her bill in equity in the Supreme Court of the District against William L. Jones, as receiver of the Eureka Insurance Company, and the Treasurer of the United States, with whom the company itself was afterwards joined by an amendment, for an injunction to prevent Jones from receiving and the Treasurer from delivering any draft or warrant on account of the claim, for a receiver to receive such draft or warrant from the United States, and to have an equitable lien declared upon such draft or warrant and its proceeds in favor of the complainant.

There was a preliminary restraining order issued in accordance with the prayer of the bill, and two receivers were appointed forthwith by the court to demand and receive the draft from the United States. There was personal service of process upon the United States Treasurer, and he appeared and demurred to the bill. What became of the demurrer does not appear from the record before us, but it is understood that it yet remains undisposed of. Seven days after the filing of the bill a general appearance was entered for Jones by his later attorney who had prosecuted the claim, and this attorney asked also to be allowed to intervene for his own interest; and some proceedings were had in pursuance of this general appearance. But subsequently upon allegations that Jones had not authorized any such appearance for him, it was stricken out at the cost of the attorney. Whereupon the complainant was compelled, if she would maintain her suit, inasmuch as Jones and the insurance company were non-residents of the District, to resort to an order of publication against them.

An order of publication was accordingly

Digitized by Google

issued. Jones and the Eureka Insurance Company failed to respond to it, and in due time a decree pro confesso was entered against both of them. Thereupon, however, but before the entry of the decree pro confesso, the appellant Jones, appearing specially for the purpose, moved the court to vacate the order of publication on the ground, as alleged, that the court was without jurisdiction to make such order under the bill of complaint, but the motion was overruled, and five days afterwards the decree pro confesso was entered. Then he sought and was allowed the present special appeal, which, while in the printed record it purports to have been from the decree pro confesso, must be assumed to have been intended to be taken from the order refusing to vacate the notice of publication.

As already stated, the appellant William L. Jones and the Eureka Insurance Company are non-residents of the District of Columbia and residents of the State of Pennsylvania; and the question sought to be raised on the present appeal is whether they have any rights of property in the District of Columbia, or within the jurisdiction of the courts of this District, so as to subject them under our code to be cited to appear here by notice of publication.

Section 105 of the Code of Law of this District, which in the main is the same as section 787 of the previously existing Revised Statutes of the United States for the District of Columbia, itself taken from the act of Congress of February 22, 1867 (14 Stat. 403), provides as follows:

"Publication may be substituted for personal service of process upon any defendant who can not be found and who is shown by affidavit to be a non-resident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons, in suits for partition, divorce by attachment, foreclosure of mortgage and deeds of trust, the establishment of title to real estate by possession, the enforcement of mechanics' liens and all other liens against real or personal property within the District, and in all actions at law and in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court."

Under the contract between the appellant William L. Jones and the deceased Allan Rutherford, the compensation to be paid to the latter for his professional services was in express terms made a lien upon the claim and upon any draft, money, or evidence of indebtedness which might be issued therefor; and the purpose of the present suit is to enforce this lien and the lawful claim of Rutherford, if the same can be established, against such draft or evidence of indebtedness. It is very clear, therefore, that this suit falls within the class of suits wherein notice by way of publication is authorized, provided that the draft drawn in favor of the appellant can be regarded as personal property within the District of Columbia, or within the jurisdiction of the courts of the District. Now, why should it not be regarded as such personal property? It is drawn here by the Treasurer of the United States; it is physically present here; it is deliverable here; it has no other situs. It is true it may be made payable elsewhere, in New York, or New Orleans, or San Francisco, or at any other place where it may suit the claimant and the officers of the Government, but it is not apparent how any such circumstance as that can affect the character of the paper as personal property in this District, while it is physically present here. It could become the subject of larceny in this District by being stolen here. It could become the subject of forgery by being fraudulently altered within the limits of the District. If it were improperly withheld by the Treasurer the courts of this District would constitute the proper forum wherein its delivery could be enforced. Mandamus would lie to compel its delivery to the person entitled to receive it; injunction would lie to prevent its delivery to a person not entitled to receive it.

Let us assume the conditions to be changed in the present instance, and that the Treasurer had announced to the appellant his intention to deliver the draft to the appellee. Wherein would lie the remedy of the appellant, upon the assumption that he regarded such proposed action of the Treasurer as unjust and without warrant of law? Undoubtedly the remedy would be by just such a suit as the present in the courts of the District of Columbia—not merely because the Treasurer is here where he may be personally served with process, but because the draft, the subject-matter of controversy, is also here and is capable of being delivered here to the person lawfully entitled to receive it. Why should not the same remedy lie in favor of the appellee, or of any person similarly situated?

The case before us, reduced to its ultimate analysis, is this: Two persons are claiming the same draft in the hands of the Treasurer, in which the United States have no longer any interest. The Treasurer, we may presume, is ready and willing to deliver it to the proper person. One of the two demands it because it is drawn in his favor, and he is the person ultimately entitled to receive the money. The other person demands it because, by reason of the convention between him and the other party, he is entitled to a lien upon it—which means that he is entitled to receive and to hold it until a specified claim of his for compensation has been paid and satisfied. Both have the right of possession, but the right of the lien holder is for the time being the paramount right.

The right of the appellee to her lien, it may be remarked, is not contested at this stage of the proceedings, if the draft is property subject to a lien. Such right is not affected by section 3477 of the Revised Statutes of the United States forbidding the assignment of claims against the United States, or of any interest therein, for here there has been no such assignment. The agreement between the parties was that while the draft, as usual in all such cases, should be drawn in favor of the claimant, it should be delivered to the attorney for its prosecution and held by him until his fee or charge thereon should be paid. There is nothing in the statute to forbid such an arrangement as this.

But the contention of the appellant is that "a claim against the United States has no locality, and the debt, if it exists, is not property

Digitized by Google

of the creditor within the District of Columbia, and in support of this contention he relies upon various decisions of the Supreme Court of the United States, which are supposed to establish it. We are of opinion that the proposition put forward by the appellant has no application to the present case, and that the decisions in question have no reference to such a condition as exists here. There is no question here of any claim against the United States by any one, or of any indebtedness due by the United States to any one. The claim and the indebtedness have been fully settled. The United States have drawn their draft for the payment of the indebtedness, which is the usual mode of payment, and they are ready to deliver that draft. It is not a question whether a claim against the United States, or an indebtedness by the United States is property here or elsewhere. The question is as to the right to the manual possession of a draft drawn by the United States, and ready to be delivered to the person lawfully entitled to its possession. The question is whether that draft is property within the District of Columbia as between two rival claimants for the possession of it. The possession of this draft is the matter in controversy between the parties, and we are of opinion that it is property in this District. It certainly has no other situs, and if it is property at all it is property in the District of Columbia.

The cases of Vaughn v. Northup, 15 Pet. 1; Mackey v. Coxe, 18 How. 100, and Wyman v. Halstead, 109 U. S. 654, cited on behalf of the appellant, are readily distinguishable from the present case. In the case of Vaughn v. Northup suit was sought to be maintained in the District of Columbia by local creditors of a deceased person, an inhabitant of Kentucky during his lifetime, against an administrator duly appointed in that State, who had received from the United States a sum of money to the deceased for military services. The contention on behalf of the local creditors was that the money due to the deceased from the United States was local assets at the seat of Government. This contention was repudiated; and it was held that the local creditors could not maintain suit against the foreign administrator outside of the jurisdiction of the court which appointed him.

In the case of Mackey v. Coxe, 18 How. 100, the suit was against the surety on an administration bond by persons entitled to distributive shares of the estate of a deceased person. Administrator had been duly granted in the Cherokee nation. The deceased had a claim against the United States. An agent of the administration came to Washington to collect the claim. It was suggested to him by the officials of the Treasury Department to take out letters of administration in this District. He did so; and the amount of this claim was paid to him. As administrator in the District he immediately turned over the fund to himself as agent for the administrator in the Cherokee country. The fund was lost in some way; and suit was instituted upon the administration bond given in this District. It was held that the suit could not be maintained.

In the case of Wyman v. Halstead, 109 U. S. 654, it was sought by proceedings in mandamus in the District of Columbia to compel the Treasurer of the United States to pay an administrator appointed in the District of Columbia the amount of some drafts drawn to the orders of certain persons, deceased at the time of the suit, who were at the time of their death residents of the State of Tennessee, wherein administration was also had on their estates at the same time. The Treasurer refused to pay the drafts without the indorsement of the administrators in Tennessee, and he was sustained in his action by the Supreme Court of the United States.

These are all plainly cases of rival administrations, wherein it was held that administration at the place of death of the deceased person was the proper and paramount administration which the Treasury officials should recognize and that, in antagonism to such administration, there was no room at the seat of Government for a rival or a different administration by reason of any supposed situs of assets in this District. Plainly there is no case of this kind before us here.

It was said by Mr. Justice Story in the case of Vaughn v. Northup and reported by Mr. Justice McLean in the case of Mackey v. Coxe, each delivering the judgment of the court:

"The debts due from the Government of the United States have no locality at the seat of government. The United States in their sovereign capacity have no particular place of domicil but possess in contemplation of law an ubiquity throughout the Union, and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicil. On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domciled at the time of his death, has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may see fit to pay it.

"If any other doctrine were to be recognized, the consequence would be that before the personal representative of any deceased creditor, belonging to any State of the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take out letters of administration in this District for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law."

A careful consideration of this enuciation of the Supreme Cout will show that it holds merely that an indebtedness by the United States to a deceased person does not create such a status of assets at the seat of the Federal Government as to require the issue of letters of administration here to procure its collection, and that payment of such indebtedness is properly made to the administrator at the place of domicil of the deceased. In our opinion it does not at all affect the question now before us. Here there is no question of different administrations, or of principals and ancillary administration, or of any administration whatever. There is question simply of the right to the present possession of

Digitized by Google

a draft, and of the right to hold it as security until a certain obligation or liability is discharged. The adverse claimants are both *sui juris*, and may sue and be sued anywhere wherever they are found, and the present custodian of the draft, the Treasurer of the United States, can properly be made amenable for the disposition of it only to the courts of the District of Columbia.

The appellant by giving a lien upon the draft authorized Rutherford to receive it and to hold it and to take all the necessary and proper steps, by suit or otherwise, to reduce it into his possession. He thereby gave to the instrument, even if it did not otherwise have it, a situs and a situs in the District of Columbia, which it is proper to enforce by suit. He can not be permitted to nullify that lien by requiring the present delivery of the draft to himself.

We are of opinion that the court below was right in issuing the notice of publication in this case, and that its order to that effect should be affirmed with costs. And it is so ordered.

Affirmed.

ALBERT FIELDS, PLAINTIFF IN ERROR, v. THE DISTRICT OF COLUMBIA.

VAGRANCY; PERSONS OF EVIL LIFE; EVIDENCE.

Proof that a defendant made his living in part by playing the piano at night in houses of ill fame, *held* not sufficient to support a conviction upon an information charging him with being "a person of evil life and fame," in alleged violation of the act of Congress of July 8, 1898 (30 Stat. 723).

No. 1545. Decided June 13, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. Thos. L. Jones, *Mr. A. W. Scott*, and *Mr. M. T. Clinkscales* for the plaintiff in error.

Mr. A. B. Duvall and *Mr. A. L. Sinclair* for the defendant in error.

Mr. Justice MORRIS delivered the opinion of the Court:

The appellant was arraigned in the Police Court of the District upon an information against him wherein he was charged with being "a vagrant, an idle and disorderly person, a person of evil life and fame, a person without visible means of support, a person repeatedly in and about the streets, avenues, alleys, roads, and highways, to wit, O street northwest," in alleged violation of the act of Congress of July 8, 1898 (30 Stat. 723), entitled "An act to amend an act for the preservation of the public peace and the protection of property in the District of Columbia, approved July 29, 1892" (27 Stat. 322). The portion of the act alleged to have been violated is in the following terms:

"That all vagrants, all idle and disorderly persons, persons of evil life or evil fame, persons who have no visible means of support, persons repeatedly drunk in or about any of the streets, avenues, alleys, roads, highways, or other public places within the District of Columbia, persons repeatedly loitering in or around tippling houses, all suspicious persons, all public prostitutes, and all persons who lead a lewd or lascivious course of life, shall, upon conviction thereof, be fined not to exceed forty dollars, or shall be required to enter into security for their good behavior for a period of six months. Said security shall be in the nature of a recognizance to the District of Columbia, to be approved by the court, in a penalty not exceeding five hundred dollars, conditioned that the offender shall not, for the space of six months, repeat the offense with which he or she is charged, and shall in other respects conduct themselves properly."

The defendant first demurred to the information and the demurrer was overruled. He then moved to quash the information and this motion also was overruled. The purpose of these two proceedings was to raise the question of the vagueness and therefore invalidity of the enactment. Next, the defendant pleaded that he was not guilty and demanded a trial by jury, but the demand was refused. To all these rulings of the trial court exceptions were duly reserved.

Trial was then had. The testimony adduced on behalf of the prosecution was that of two policemen, who testified in substance that the defendant was known as a "professor;" that he made his living by playing the piano in houses of ill-fame in that malodorous part of the city of Washington commonly known as the "Division;" that he played there only at night, and charged for his services $1.50 a night in addition to what he received by collections; that the prostitutes would sing and dance while he played, and that he and other piano players in that section were hired to play for the entertainment of the guests.

During the cross-examination of one of these witnesses the counsel for the defendant inquired upon which of the charges contained in the information the defendant was being tried, and the counsel for the prosecution replied, "that which charged him with being a man of evil life," and that he abandoned all of the others.

At the close of this testimony motion was made on behalf of the defendant for his discharge on the ground that the testimony failed to disclose that he was guilty of any of the offenses charged against him. The motion was overruled and exception reserved.

Thereupon the father and brother of the defendant were called to testify on his behalf. Their testimony was in substance that the defendant was a married man and lived with his wife in a house on Madison street; that he worked every day for a living as the driver of a grocery wagon and supported his family, and that he was a piano player.

This seems to have been all the testimony that was introduced. Thereupon the motion for verdict and judgment on behalf of the defendant was renewed, and was again overruled, and the defendant was sentenced to pay a fine of $40, and in default of payment to stand committed to the workhouse for six months.

Upon writ of error allowed to him he has brought his cause here for review.

We deem this a proper occasion in which to call attention to a certain absurdity of language which is becoming more frequent in the construction of bills of exceptions in the Police Court, and which appears in the case now be-

Digitized by Google

fore us. It is in the formula that the court is asked to instruct itself as matter of law, etc., in cases tried without jury. This is nonsense. The proper form is that the court is requested to rule, etc.

There are seven assignments of error here, but there are only three questions of law raised by them: First, whether the statute is valid or void for uncertainty; second, whether the defendant was entitled to a trial by jury; third, whether there was testimony in the case sufficient in law to support the information. But we do not deem it necessary to consider either the first or the second question, for we are very clearly of opinion that there was no sufficient testimony in the case to charge the defendant with criminality or delinquency of any kind under the law.

By the concession of the counsel for the prosecution the information was restricted to the charge that the defendant was a man of evil life. It may perhaps be regarded as of no consequence here that the information charges both an evil life and evil fame, as though the combination of both things were necessary to constitute the offense in question, while the statute is in the alternative and seeks to reach either evil life or evil fame. That which is important is that there is no testimony whatever to sustain the charge either of one or of the other. It does not appear that the learned "professor," who seems to have combined the pursuit of the heavenly art of music with the more mundane and prosaic occupation of delivering provisions from a grocery wagon, ever acquired fame of any kind, neither good or evil, by his performances, such as Nero did, who is said to have fiddled while Rome burned. And if he is designated as "a man of evil life" because nightly for a consideration he dispensed the harmony of sweet sounds to admiring bands of the gentle and refined nymphs of "The Division," as it is called, and the fastidious guests whom they were pleased to admit to a view of their Terpsichorean performances, it might well be argued that he deserves praise rather than blame for seeking to lead his auditors from Cyprus to Parnassus, from the lascivious groves of Daphne to the purer fountains of Helicon. It is true that excessive playing of the piano has sometimes excited homicidal mania throughout a whole neighborhood; but we have no complaint that our learned "professor" here gave cause for any such feeling among the placid denizens of the Division, or in any way disturbed the peace and quiet of the place.

Seriously, we do not understand how the proof of playing the piano at night in a house of ill fame in the Division can convict one, especially a person of the class to which the appellant belongs, of being a man of evil life, any more than if he played that instrument in the homes of aristocracy. The act would be the same in both cases; and the locality of the performance does not in any manner qualify its character. We do not understand that the art of music is a crime in the Division and an accomplishment in Belgravia. Why may we not hold the man who furnishes groceries to these dens of Cyprianism to be a man of evil life, if we are to hold as such the man who furnishes music to them? If the charge against this appellant had been that he frequented houses of ill-fame, it is possible that a case of misdemeanor could have been made out against him. But the charge is not of that kind; it is that of being a man of evil life, whatever that means; and this charge may reach Belgravia as well as the "Division." It can not in reason be supported by proof of playing the piano at night in the last mentioned quarter of the city.

We think the judgment appealed from should de reversed. The cause will be remanded to the Police Court, with directions to vacate the judgment, and to discharge the defendant. And it is so ordered.

Reversed.

HARRY G. WILSON, PLAINTIFF IN ERROR,

v.

DISTRICT OF COLUMBIA.

License Taxes; Building and Other Contractors; Contracting Bricklayers.

1. A contracting bricklayer doing his work in person, with the help of other bricklayers hired for the purpose, and who carries on his trade by contracting with building and general contractors to lay a part or all of the bricks required in their work of construction either at a stated sum per thousand or at a fixed price for the job undertaken, is not a "building contractor," within the meaning of the provision of paragraph 46 of the act of Congress of July 1, 1902, imposing an annual license tax of $25 upon "building and other contractors."
2. The words "and other contractors" in said provision are too indefinite to be enforced.

No. 1553. Decided June 13, 1905.

In error to the Police Court of the District of Columbia. Reversed.

Mr. W. H. Sholes for the plaintiff in error.

Mr. A. B. Duvall and *Mr. F. H. Stephens* for the defendant in error.

Mr. Chief Justice Shepard delivered the opinion of the Court:

An information presented in the Police Court charged the plaintiff in error with engaging in the business of a contractor in the District of Columbia, "to wit, the business of a contracting bricklayer in constructing buildings and other structures," without first having obtained a license so to do, and paying the license tax therefor, etc.

The case was submitted to the court upon the following agreed statement of facts:

"The defendant Harry G. Wilson is a bricklayer by trade; that his business is to make contracts with builders and general contractors to lay part or all of the bricks required in any work undertaken by a builder or general contractor, either at a stated amount per thousand or for a stated price as to the entire number of bricks to be laid; that the defendant makes no contracts with the owner of the work, but always contracts with the builder or general contractor of the owner; that the defendant maintains no regular force of bricklayers, but employs one or more bricklayers to help him as the number of the bricks to be laid may require; that in the prosecution of the work of laying the bricks the defendant and those employed by him are at all times subject to the direction and under the control of the builder or general contractor."

Digitized by Google

A judgment of conviction was rendered, followed by fine, and a writ of error has been regularly allowed.

The question involved is, whether the plaintiff in error is a building contractor within the comprehension of paragraph 46 of the act of Congress, approved July 1, 1902, imposing an annual license tax of $25 upon "building and other contractors."

It is a well established principle that statutes imposing restrictions or burdens upon the ordinary business or common occupations of the people are to be strictly construed. Transportation Co. v. D. C., 19 App. D. C. 462, 470. Taxes, by way of license for the pursuit of such occupations, must be imposed by clear and unambiguous language. The citizen must be informed with reasonable certainty, by the words of the statute itself, of his obligation to pay a license tax for the pursuit of his business; especially when his refusal to pay the same is made a criminal offense. Transportation Co., v. D. C. supra; Lockwood v. D. C., 33 W. L. R. 131; D. C. v. Chapman, 33 Wash. Law Rep. 232.

In accordance with this principle, it is held in those cases that the statute imposing the license taxes claimed therein could not be enforced for want of certainty in the terms employed; it having neither defined the particular occupation sought to be subjected to the tax nor used words of established, or reasonably popular signification clearly embracing the same.

In Lockwood's case the occupation designated in paragraph 46 was that of "claim-agent." In Chapman's case the party was a wholesale and retail dealer in wood and coal, who had entered into a contract with the District of Columbia to supply it with wood and coal during a certain period. The contention was that he was liable to the license tax under the clause now under consideration, namely, "Building and other contractors." Confessedly he was not a building contractor, and it was held that the terms "other contractors" was too uncertain, and left too much to the discretion of the taxing officers.

A builder has been defined to be "one who builds, or whose occupation is that of building; specifically, one who controls or directs the work of construction in any capacity." 6 Cyc. L. and P., p. 6. "He comes between the architect who designs the work and the artizans who execute it." Eng. Encyc. See, also, Little Rock, etc., R. R. v. Spencer, 65 Ark. 183, 193.

If the word "building contractor" has a fixed, popular meaning, it is that of one who contracts with the owner to become his builder, to erect his structure according to certain plans and for a certain compensation. The agreed statement of facts shows that the trade of the plaintiff in error is that of a bricklayer. He does his work in person, with the help of other bricklayers hired for the purpose. He carries on his trade by contracting with builders and general contractors to lay a part or all of the bricks required in their work of construction, either at a stated sum per thousand or at a fixed price for the particular job undertaken. It does not appear, even, that he ever furnishes the brick to be laid, and he never contracts with the owners for any part of the building to be erected. The extreme inference that can be deduced from these facts is that the plaintiff in error is nothing more than is commonly known as a sub-contractor—one who, having no contract relation with the owner, contracts with his builder to perform a part of the work undertaken by the latter. He is no more a builder, or building contractor, than the plumber, the painter, or the plasterer, who may, by like subcontracts, undertake their particular parts of the general structure.

It was conceded on the argument by the corporation counsel that in the opinion of the taxing officers, with which they agree, these last-named persons are not subject to the license tax imposed upon building contractors. It is contended, however, that there is a materal difference between them and the contracting bricklayer, because he builds the necessary walls of the house while they only assist in its perfection. We do not concur in this view. His work is merely first in due order. The house is not built when the brick walls are erected. The bricklayer, working under the contractor for the building, is not himself a building contractor, but rather an artisan, whether he works by the day, by the completed piece, or by special contract for the entire brick work included in the builder's contract with the owner.

The Congress may have contemplated the inclusion of sub-contracting bricklayers, carpenters, plasterers, plumbers, and the like, by the use of the words "and other contractors" in the clause under consideration, which, as we have seen, are inoperative by reason of their want of certainty. But whether this assumption is or is not well founded we think it clear that they are not to be regarded as building contractors within the meaning of this provision of the statute.

For these reasons the judgment will be reversed with costs and the cause remanded with direction to acquit the defendant. It is so ordered.

Street Railroads—Contributory Negligence.—In an action for injuries caused by plaintiff's wagon being struck by a street car, evidence held to justify submission of the issues of defendant's negligence and plaintiff's contributory negligence. Freymark v. St. Louis Transit Co. (Mo.), 85 S. W. Rep. 606.

Homicide—Persons Engaged in an Affray.—Where persons are engaged in an affray, and one of the parties is killed, a defendant can not escape on the ground that he did not kill him, if he brought on the difficulty. State v. Gaylord (S. Car.), 50 S. E. Rep. 20.

Mechanics' Liens—Change of Ownership of Property.—A change of ownership of real estate while improvements therson are in progress does not defeat the right to a mechanics' lien. D. L. Billings Co. v. Brand (Mass.), 73 N. E. Rep. 637.

Homicide—Degrees of Offense.—A killing in a combat which engenders hot blood is not murder in the first degree, in the absence of premeditation. Osburn v. State (Ind.), 73 N. E. Rep. 601.

Digitized by Google

Court of Appeals of the District of Columbia.

CHARLES W. CRITCHFIELD ET AL., APPELLANTS, v. GEORGE J. EASTERDAY, EXECUTOR, ETC., ET AL.

DEEDS; SUIT TO VACATE FOR MENTAL INCAPACITY OF GRANTOR; EVIDENCE.

In a proceeding in equity to vacate two deeds on the ground of the alleged mental incapacity of the grantor, the testimony held insufficient to show that at the time of their execution the grantor was without the mental capacity required for their due execution.

No. 1589. Decided June 13, 1905.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,472, in suit to vacate certain deeds for alleged incapacity of the grantor. Affirmed.

Mr. Milton Strasburger and *Mr. O. W. Aldrich* for the appellants.

Messrs. Brandenburg & Brandenburg, Mr. H. S. Matthews, and *Mr. J. Holdsworth Gordon* for the appellees.

Mr. Justice MORRIS delivered the opinion of the Court:

This is a proceeding in equity to vacate two deeds, one a deed of trust by way of mortgage, and the other a deed of conveyance in fee simple, on the ground of alleged mental incapacity on the part of the principal grantor in the two deeds.

Doctor Thomas B. Campbell and his wife, Ellen J. Campbell, who seem to have come from the State of Ohio, were residents of the city of Washington for several years, and had reached an advanced age at the time when the transactions were had which constitute the subject-matter of this litigation. They had no children born of their marriage, but Doctor Campbell had a grandson, the appellee, Vernon L. Lawlor, a youth of the age of about seventeen years, when the bill of complaint in this case was filed on August 18, 1902, and who was the son of a daughter by a previous marriage and resided in the State of Illinois. An inmate also of the family to some extent was the appellee, William Benton Campbell, who was the son of a first cousin of Dr. Campbell, and apparently his nearest relative after young Vernon Lawlor. Mrs. Ellen J. Campbell had two brothers, who are the appellants, Charles W. Critchfield and Wilson Critchfield, and this proceeding is a controversy over certain real estate in the District of Columbia between the relatives of Dr. Campbell and the relatives of Mrs. Campbell, both Dr. Campbell and Mrs. Campbell being now dead.

On November 1, 1901, two parcels of land in Le Droit Park, a suburb and now practically an annex of the city of Washington, one designated as lot No. 5, which was improved by a dwelling house and was the place of residence of Dr. and Mrs. Campbell, and the other designated as lots Nos. 43 to 48, both included, which was unimproved, stood in the name of Ellen J. Campbell. The first parcel was of the value of about $8,000, but was incumbered by a mortgage for $4,500. The second parcel was unincumbered, except by some special assessments levied against it by the District of Columbia, and was of the value of about $9,000. For the purpose, it appears, of paying these special assessments, and also, as it would seem, to procure means for the support of the family, Dr. and Mrs. Campbell on the day last mentioned procured a loan of $3,000 from the appellee, Mrs. Sarah E. R. Queen, and to secure its repayment with interest at the rate of five per centum per annum, executed a deed of trust by way of mortgage on the second parcel of land which has been mentioned to the appellees, George J. Easterday and George Y. Worthington, as trustees, and this deed was duly recorded. The loan was for three years and is now overdue.

Subsequently, on February 21, 1902, for the purpose of having the title to both pieces of property in the name of Dr. Thomas B. Campbell, the husband and wife united in a deed of conveyance of both to the appellee, William Benton Campbell, subject to the two deeds of trust thereon, and immediately on the same day William Benton Campbell conveyed them to Dr. Thomas B. Campbell. The consideration for both deeds was only nominal, but the testimony indicates that the money for the original purchase of both pieces came from Dr. Campbell.

Three days afterwards, on February 24, 1902, Dr. Campbell executed his will, and devised his entire estate to the appellee, George J. Easterday, in trust for his wife, Ellen J. Campbell, for life, with discretion to the trustee to sell or mortgage for her benefit at any time as might be expedient; and upon her death to divide the estate equally, or whatever should then remain of it, between the appellees, Vernon Lawlor and William Benton Campbell, subject to a legacy of $1,000 to an old and faithful servitor. He died a week afterwards, on March 3, 1902, and in due time the will was admitted to probate in the probate branch of the Supreme Court of the District; and the appellee, George J. Easterday, entered upon his duties as executor and trustee thereunder.

Very soon after Dr. Campbell's death Mrs. Campbell returned to Ohio, or rather was taken there, and resided with her relatives in the city of Columbus, where she died on May 19, 1902, having survived her husband only two months and a half. She left a will executed on June 11, 1900, whereby she devised the first parcel of land hereinbefore mentioned and one undivided half of the second parcel to her husband, Dr. Thomas B. Campbell, and the other undivided half of the second parcel to be equally divided between her two brothers, the appellants; and she named the appellant, Charles W. Critchfield, as her executor. This will implies some degree of hostility to her husband at the time, for it provides that if he should make and enforce any claim to any other property of hers, the amount of such claim realized by him should be a charge upon the property devised. This will, also, was duly admitted to probate in the Supreme Court of the District of Columbia, and the executor became duly qualified.

In a short time thereafter, on August 18, 1902, the present proceedings were commenced by

Digitized by Google

the parties interested under the will of Mrs. Campbell by the filing of a bill in equity against the persons interested under the will of Dr. Campbell. The substantial allegation of this bill is that, at the time of the execution by Dr. and Mrs. Campbell of the various deeds that have been mentioned, Mrs. Campbell was not of sound mind and was incapable of making a valid deed or contract, and that the deeds in question were procured by undue influence on the part of Dr. Campbell. And the prayer of the bill is for their cancellation. The answers in positive terms denied both the mental incapacity of Mrs. Campbell and the alleged undue influence of Dr. Campbell. Considerable testimony was taken. Twenty-three witnesses were examined on the part of the complainants, and testified to acts of mental unsoundness. Nine witnesses on behalf of the defendants controverted this testimony. At the hearing the court held that the complainants had failed to establish their case, and dismissed the bill; and from the decree of dismissal the complainants appealed.

1. The appellants have abandoned in this court their contention against Sarah E. R. Queen and against Easterday and Worthington, the trustees in the deed made to secure the indebtedness due to her. There is absolutely no case whatever made out against her right; and as to her and her two trustees, beyond all question the bill was properly dismissed. The appellants are without the shadow of right to disturb her security.

2. As between the appellants and the other appellees there is no question of law involved. The parties are agreed upon the law. In their brief the appellants say as follows: The only controverted question of law involved in the case is based upon the alternative prayer in the bill, which asks that if the court should find that the deed of trust can not be set aside, that it shall be paid from the part of the property devised to Dr. Thomas B. Campbell. We claim that under the general principles of equity, if it appears from the evidence that Mrs. Campbell was not competent to do business when the deed was made, and that this fact was known to her husband when he caused her to execute the instrument, that upon him shall fall the burden, and that as he died before the death of his wife, it shall fall upon those who represent him as heirs at law.

While we think that this contention as to the law applicable to this case is not sound, even in the contingency that Mrs. Campbell was not competent to execute the deed of trust at the time at which she did execute it, since the money was borrowed, at least in part, for her benefit and for the release of her property from the lien of assessment, yet even if it were admitted to be a correct exposition of the law, we regard it as of no consequence in this case. For we are of opinion that it is not shown by the testimony that at the time of the execution of these deeds Mrs. Campbell was without the mental capacity required for their due execution.

The question is merely one of fact, and concurring as we fully do in the conclusion deduced from the testimony by the learned justice who heard the cause in the court below, we do not see that any good purpose whatever would be subserved by any new analysis of that testimony by us. We will content ourselves with quoting and adopting as our own two paragraphs from the opinion of that justice to be found in the record, wherein he admirably sums up his conclusion. He says:

"But I am not satisfied of her [Mrs. Campbell] mental incapacity to execute either the deed of trust or the subsequent deed in fee. It is true a larger number of witnesses have testified generally to her defective memory during the period covering these instruments than have testified that she was mentally sound. But in my mind this mass of general testimony, not showing, as frankly admitted by counsel for plaintiffs, actual insanity, is not conclusive as to her incapacity to execute valid deeds at the identical times when unimpeached witnesses who were personally present say she did execute such deeds knowingly and with a complete understanding of their purpose and effect. Even an insane person may have lucid intervals, and his contracts then made are valid and binding. Much more may one who is affected by a progressive disease such as softening of the brain have periods of complete comprehension and understanding of transactions, especially when not more complicated than those involved in this case.

"It is contended, however, that although not insane, Mrs. Campbell was in such an infirm mental condition as to be dependent upon her husband, and subject to his superior will. This would appeal to me so far as the transaction of February 21 is concerned, were the circumstances surrounding it inequitable, or did they show any undue advantage taken of her by her husband. But I am not so impressed. Here were two old, infirm, childless persons, on the verge of the grave, attempting to arrange their meagre property so that each should have support and maintenance during the short remaining space of their allotted days. By the testimony, the property had been bought by the husband and the titles placed in the wife. She makes a deed conveying all to him and he makes a will giving her, through a trustee, the absolute right to use it all for her support and maintenance during her life. I can not see in this transaction any undue advantage taken of her."

We do not think that we need add anything to this. We think that it states the case fully and accurately.

The decree appealed from must be affirmed with costs. And it is so ordered.

Affirmed.

An old darkey was under indictment for some trivial offense and was without counsel. The judge appointed a lawyer to defend him who had never tried a case in court.

As he walked forward to consult with his client the prisoner turned to the judge and said:

"Yo' Honah, am dis de lawyer what am depointed to offend me?"

"Yes."

"Well," continued the old darkey, "take hit away, jedge; I pleads guilty."

Digitized by Google

Bills and Notes—Checks—Stoppage of Payment—Disregard by Bank—Waiver.

In Pease & Dwyer Co. v. State National Bank, decided by the Supreme Court of Tennessee in June, 1905 (88 S. W. 172), it was held that under Negotiable Instrument Law, section 189 (acts 1899, p. 172, ch. 94), providing that a check is not an assignment of any part of the drawer's funds, and the bank is not liable to the holder unless and until it accepts or certifies the check, the drawer of an ordinary check may, before it is accepted, revoke it and forbid its payment, and any subsequent payment by the bank is made at its peril.

It was further held that in order to place a check beyond the control of the drawer and preclude him from stopping payment thereon, it must be clearly shown that it was the intention of the parties to assign all or a part of the specific fund on deposit.

It was decided that the bringing of suit by the drawer of a check against the payee to recover the sum for which it was drawn was not a ratification by him of the act of the bank in paying the check after he had stopped payment thereon. The court said in part:

The drawer of a check in the usual form, upon his general account with a bank, firm, or person, before it is accepted, expressly or by implication, may revoke it and forbid its payment, after which payment, if made, is at the peril of the bank. A check of this kind is not an appropriation of any part of the funds to the credit of the drawer with the bank, and does not constitute any claim or right of action against the bank until it is accepted or certified by it. The remedy of the holder, if payment is refused, is against the drawer. Negotiable Instrument Law, acts, 1899, p. 172, c. 94, sec. 189; Imboden v. Perrie, 81 Tenn. 505; Pickle v. Muse, 88 Tenn. 385, 12 S. W. 919, 7 L. R. A. 93, 17 Am. St. Rep. 900; Akin v. Jones, 93 Tenn. 356, 27 S. W. 669, 25 L. R. A. 523, 42 Am. St. Rep. 921.

In Imboden v. Perrie, 81 Tenn. 505, supra, the contest was between a creditor whose attachment was levied by garnishment upon the balance of a depositor in a bank, and the payee in a check drawn upon the bank before the levy of the attachment, and presented afterwards. This court quotes approvingly from Attorney-General v. Continental Life Insurance Co., 71 N. Y. 325, 27 Am. Rep. 55, this statement of the law concerning the relations of banks, their depositors, and the holders of unaccepted checks: "Church, C. J., said: 'Lunt v. Bank of North America, 49 Barb. 221, declares the rule accurately, that checks drawn in the ordinary form, not describing any particular fund, or using any words of transfer of the whole or any part of any amount standing to the credit of the drawer, but containing only the usual requests, are of the same legal effect as are inland bills of exchange, and do not amount to an assignment of the funds of the drawer in the bank.

"'This doctrine accords with the relations between the parties. Banks are debtors to their customers for the amount of their deposits. A check is a request of the customer to pay the whole or a portion of such indebtedness to the bearer, or to the order of the payee. Until presented and accepted it is inchoate. It vests no title or interest, legal or equitable, in the payee, to the fund. Before acceptance the drawer may withdraw his deposit. The bank owes no duty to the holder of a check until it is presented for payment.'"

The facts of the case of German Nat. Bank v. Farmers' Dep. Nat. Bank, 118 Pa. 313; 12 Atl. 305, were similar to those in the case of Imboden v. Perrie. It is there said:

"I presume no one at this day questions the right of the drawer of a check to stop the payment thereof. This is usually done by notice to the bank on which the check is drawn. If the bank pay after such notice it does so at its peril. The holder of a check has no remedy against the bank upon which a check is drawn for its refusal to pay it. He must look to the drawer."

In the case of Kahn v. Walton, 46 Ohio St. 205, 20 N. E. 203, involving this direct question, it is said:

"A check, being simply a written order of a depositor to his banker to make a certain payment out of his funds, is executory, and, of course, revocable at any time before the bank has paid it or committed itself to its payment. . . . The bank is the agent of the drawer. Its duty is to pay his money as he directs. It owes no duty to the holder except under the drawer's directions, until, by virtue of those directions, it assumes some obligation to the holder; up to that time the latest order from the drawer governs."

In the case of Florence Mining Co. v. Brown, rec'r, &c., 124 U. S. 391, 8 Sup. Ct. 534, 31 L. Ed. 424, Mr. Justice Field says:

"A general deposit in a bank in so much money to the depositor's credit; it is a debt to him by the bank, payable on demand to his order, not properly capable of identification and specific appropriation. A check upon the bank in the usual form, not accepted or certified by its cashier to be good, does not constitute a transfer of any money to the credit of the holder; it is simply an order which may be countermanded and payment forbidden by the drawer at any time before it is actually cashed. It creates no lien on the money which the holder can enforce against the bank. It does not of itself operate as an equitable assignment."

Further cases in accord with these are: St. Louis & San Francisco Ry. v. Johnston, 133 U. S. 574; 10 Sup. Ct. 390, 33 L. Ed. 683; Fourth St. Nat. Bank v. Yardley, 165 U. S. 634, 17 Sup. Ct. 439, 41 L. Ed. 855; Schneider v. Bank, 1 Daly, N. Y. 501; O'Connor v. Mechanics' Nat. Bank, 124 N. Y. 332, 26 N. E. 816; Randolph v. Allen, 73 Fed. 42, 19 C. C. A. 353; State v. Bank of Commerce, 49 La. Ann. 1078, 22 South. 207; House v. Kountze, 17 Tex. Civ. App. 406, 43 S. W. 561; Sunderlin v. Mescosta County Saving Bank, 116 Mich. 284, 74 N. W. 478.

Officers of a corporation who secure subscriptions to its stock by fraud are held, in Mack v. Latta (N. Y.), 67 L. R. A. 126, to be properly joined in an equitable suit against the corporation to enjoin collection of the amount unpaid, and to secure the return of what has been paid upon the subscription.

Digitized by Google

Consequential Damages.

A very curious claim is advanced by plaintiff in the case of Coppola v. Kraushaar, 92 New York Supplement, 436. Plaintiff alleged that on a certain date he ordered of defendant two gowns for his betrothed, stating to defendant at the time that he was to wed on a certain date, was incurring great expense in arranging a suitable celebration for that occasion, and that the gowns must be finished on the day preceding the wedding. It was asserted that plaintiff and his betrothed demanded the gowns on this date, and that they were not finished, in consequence of which the wedding was "broken off." Plaintiff sought to recover for the money expended by him in buying presents, wines, clothes, etc., in anticipation of his wedding. The court suggests that in view of the damages one might be tempted to conjecture that the pleader had lost sight of the distinction between breach of contract and breach of promise of marriage, and holds that the damages are too remote; saying that, while such a disappointment would naturally be keen to any prospective bride, it could hardly be contemplated, in the absence of specific warning, that she would refuse ever to wed if the two dresses were not forthcoming before the day set for the ceremony.

Marriage by Estoppel.

That one may be estopped to question the validity of a marriage which, when celebrated, was entirely void, is maintained in Chamberlain v. Chamberlain, 59 Atlantic Reporter, 813. The suit was for divorce, and it appeared that complainant (who was the wife) and defendant were formally married and entered into matrimonial relations thinking that complainant's then husband was dead. Later, in order to place the legality of their relation beyond question, complainant procured a divorce from her lawful husband, who was in fact alive, but in parts unknown, after which defendant, in the presence of witnesses, assured complainant that she was his lawful wife, and that no other ceremony was necessary, and thereby induced complainant, by reliance on such representations, to remain with him as his wife for over twenty years. Under these circumstances it was held that defendant was estopped from denying the legality of the marriage with complainant.

Bloodhounds.

In Denham v. Commonwealth, 84 Southwestern Reporter, 538, the Kentucky Court of Appeals takes issue with the holding of the Nebraska Supeme Court that in a prosecution for crime evidence of the fact that bloodhounds went from the scene of the crime to defendant's home is not admissible in evidence. In the case mentioned it is held that in a prosecution for assault with intent to kill, evidence of the trailing of defendant by bloodhounds, which were shown to have been of good breeding and to have been carefully trained in tracking men, and which had tracked and aided in the capture of many criminals, was admissible, although the pedigrees of the dogs were not asked about or stated with particularity.

Eminent Domain—Damages.

The defendant's contention that in assessing damages for the condemnation of a railroad right of way the plans and prospects of the owner of the land should be considered in enhancement of the damages gives rise to the case of Dowie v. Chicago, W. & N. S. R. Co., 73 Northeastern Reporter, 354. The railway company condemned a strip of land within the limits of Zion City, and defendant Dowie (who, by the way, is the only person who owns any land in Zion City) contended that the facts that he had formed a great plan for the salvation and upbuilding of humanity, had formed a city of 10,000 population in some two years, and intended to gather there all of the 100,000 members of his church, should be considered in determining the value of the land. Other land in the immediate vicinity was worth only $200 an acre, while defendant claimed that owing to the facts mentioned his property was worth $13,000 an acre. It is, however, decided that while every one has a right to entertain any religious belief he may see fit, this right does not carry with it any increased or additional property rights, and that the value of his property when taken for public use must be measured in the same manner as other property owned by other people in the same vicinity and similarly situated.

Shipping—Carrier's Liability for Jewelry Taken from State Room.—Where Jewelry was taken from the cabin of a passenger on a steamship, the carrier's liability was that of an insurer, in the absence of negligence on the part of the passenger.—Hart v. North German S. S. Co., 92 N. Y. Supp. 338.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of William Thompson Harris, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 29th day of August, 1905, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of August, 1905. CORCORAN THOM. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,306. Administration. 32-3t

Digitized by Google

Legal Notices

Lambert & Baker, Solicitors

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.
Elizabeth Ray, Complainant, v. Mary A. Troxall and Charles H. Upperman, Defendants.
In Equity. No. 25,562.

The object of this suit is to establish of record the title in fee simple of the complainant to all of the following property: Part of lot numbered fifty-three (53), fronting on Beall street in Thomas Beall of George's addition to Georgetown, beginning at the southwest corner of the lot of Robert Craig's heirs, it being also a part of said lot fifty-three (53) and running west with Beall street twenty-one (21) feet, then north one hundred twenty (120) feet, then east twenty-one (21) feet parallel with Beall street, then south one hundred twenty feet to the beginning. And all those parts of lots numbered one hundred twenty-nine (129) and one hundred thirty (130) in Beatty and Hawkins' addition to Georgetown, comprised within the following metes and bounds, viz, beginning for the same at a point in the north line of Second street fifty-seven (57) feet four (4) inches west from the west wall of Poon house, formerly Green's, the same standing on part of lot numbered one hundred twenty eight (128), the said point of beginning being also distant one hundred ninety-two (192) feet westerly from the northwest corner formed by the intersection of Second and High streets, and now thence west on the north line of Second street eighty-five (85) feet two (2) inches to the center of the eastern wall of the upper or western brick house of the old brewery property, the same being a two-story brick house now owned and possessed by William Dougherty, then north by and with said east wall and parallel with Market street to the north boundary line of the said lots numbered one hundred twenty-nine and thirty, then east by and with the said north boundary line eighty-five (85) feet two (2) inches to a point which will be intersected by a line drawn north and parallel with Market street, from the place of beginning on Second street, and then south by and with the said line reversed to the beginning; and to secure a release of conveyance in connection with two deeds in trust recorded, respectively, in liber J A B, No. 19, at folio 418 et seq., and in liber J A B, No. 19, at folio 423 et seq., of the land records of the county of Washington, District of Columbia. On motion of the complainant it is this 8th day of August, A. D. 1905, ordered that the defendant **Charles H. Upperman** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Post; otherwise the cause will be proceeded with as in case of default, sufficient cause having been shown for dispensing with a longer period of publication. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 32-3t

---

L. O. Posey, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Robert J. Daniels**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **8th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1905. LOGAN JOHNSON, 2009 Vermont ave. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,068. Administration. 32-3t

---

James B. Archer, Jr., Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Morris O'Rourke**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **8th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1905. BRIDGET O'ROURKE, 340 B st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,091. Administration. 32-3t

Legal Notices.

William Henry Dennis, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.
Estate of Amelia Egan, Deceased.
No. 13,055. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Rudolph Eichhorn, it is ordered this 8th day of August, A. D. 1905, that notice be and hereby is given to **William E. Egan and the unknown next of kin and the unknown heirs at law of said Amelia Egan**, and to all others concerned, to appear in said court on **Friday, the 22d day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 32-3t

---

Smith Thompson, Jr., Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Joseph Patch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of August, 1905. ELIZABETH M. PATCH, 942 R. I. ave. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,084. Administration. 32-3t

---

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.
Gilbert J. Osterman et al. v. Robert E. Poole et al.
No. 25,518. Equity.

The object of this suit is to perfect complainants' title to sublots 108 to 114, inclusive, square 104, Washington, D. C. On motion of the complainants, it is, this 10th day of August, A. D. 1905, ordered that the defendants, **Robert E. Poole, Susan Erwin, and Ann Council**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, **the unknown heirs, devisees, and alienees of Martin Casner, of Martin Kershner, of Margaret Freeman, of Charles W. Goldsborough, and of Charles Henry Goldsborough**, cause their appearance to be entered herein on or before the rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the month following the first publication of this order, and twice a month for the two succeeding months, in The Washington Law Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clk.
au 11,18,25; sept. 8,22; oct. 13,27

Joseph Salomon, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Abraham Herman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **5th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of August, 1905. MONNIE HERMAN, BERNARD HERMAN, 788 7th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,087. Administration. 32-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 35

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - SEPTEMBER 1, 1905

CONTENTS.

Editorial 545
Judge Charles C. Cole—Memorial Exercises 546
SUPREME COURT OF THE DISTRICT OF COLUMBIA:
Margaret A. Hill et al., complainants, v. Amanda Moore et al 549
Notes of Decisions 550
Legal Notices 557

Changes in the Office of U. S. Attorney for the District of Columbia.

Mr. Morgan H. Beach, for the past two years United States attorney for this District, retired from that position on Thursday, August 31, 1905, and is succeeded by Mr. Daniel W. Baker, whose commission was signed by the President during the present week. The oath of office was administered to Mr. Baker by Justice Ashley M. Gould, of the Supreme Court of the District, on Friday morning.

Mr. Beach retires after a most satisfactory administration of the duties of the position. During the two years of his incumbency the office has had to deal with a number of cases of exceptional interest and importance, including the charges of conspiracy against certain officials of the Postoffice Department and others. For some time past he has been giving much attention to the collection and presentation to the grand jury of evidence in connection with the cotton report scandal in the Department of Agriculture, resulting in the indictment of a former assistant statistician and others for conspiracy. In view of his thorough understanding of the case, it has been suggested that he will be appointed a special attorney for the United States in the prosecution of these cases. Prior to his appointment Mr. Beach was highly esteemed by his brethren at the bar, and his discharge of its important duties has added to the regard entertained for him.

In connection with the retirement of Mr. Beach several pleasant incidents occurred. The grand jury presented him with a handsome silk umbrella, the spokesman for the jury being Mr. Thomas Marshall. At 1 o'clock on Thursday the entire office staff went to the room of Mr. Beach and presented him with a tribute of their esteem in the form of a handsome loving cup. In making the presentation Mr. Alex. R. Mullowney, one of the assistant attorneys, spoke briefly, expressing the warm admiration entertained for their retiring chief. Mr. Beach replied, expressing his appreciation of the gift and of the great help he had received from them in the discharge of the duties of the office.

Mr. Baker, who succeeds him, is one of the most popular members of the local bar. He has practiced law in this District for nearly twelve years with signal success, and is recognized as a lawyer of fine abilities and a man of high character. His friends, and included among them is practically the entire bar, confidently predict for him a most successful career in the important position to which he has been appointed.

Right of Life Tenant of Private Cemetery to Grant Burial Permits.

A somewhat novel question is decided by the Supreme Court of this District in the case of Hill v. Moore, reported in this issue. It appeared that one Jacob Moore, now deceased, owned a tract of land on which he conducted a private cemetery. He deeded the tract to trustees for the use of his wife for life, she to have all rents and profits, with remainder over at her death. The trustees were directed to sell and convey any or the whole of the land upon her direction, the proceeds to be held so that she would receive the income. After his death, the life tenant (the widow) continued the business in his name, granting permits to bury and receiving the consideration therefor. The question was as to whether, in so doing, she exceeded her rights in the property. The remaindermen, contending that in granting such permits and receiving the consideration, she was acting in excess of her rights, brought suit for an injunction and receiver. Mr. Justice Stafford, on the hearing of a rule to show cause, held, however, that the right of the widow as life tenant was analogous to that of a life tenant to continue the operation of mines and quarries, even though the corpus of the estate is thereby diminished or exhausted, without being liable to impeachment for waste.

The sale of the good will of a partnership at the instance of the personal representative of the deceased partner, as part of the firm's assets, is held, in Hutchinson v. Nay (Mass.), 68 L. R. A. 186, not to preclude the surviving partner from entering into a competing business and soliciting trade from the customers of the old firm.

Digitized by Google

In Memoriam.

HON. CHARLES C. COLE.

Proceedings at the Meeting of the Bar of the District Held March 24, 1905.

The meeting was called to order at 3 o'clock p. m. by the president of the association, Hugh T. Taggart, Esq., who spoke as follows:

Remarks of Mr. Hugh T. Taggart.

"The bar of the District of Columbia is again called upon to mourn the loss of one of its distinguished and valued members, of whom it is bereaved by the death of the Hon. Charles C. Cole, which took place about a week ago, under circumstances so unexpected as to shock us all.

"The deceased was appointed from this bar as a member of the bench of the Supreme Court of the District of Columbia, and after serving there for several years retired to resume the practice of his profession.

"It is common knowledge of us all that while on the bench he developed and manifested in such a high degree the qualities of an able, learned, and impartial judge that his retirement from the bench was the cause of general regret.

"After resuming his practice he addressed himself to it with the untiring zeal and energy that we all know was one of his principal characteristics, and it may well be said that he fell a victim to his unwearied devotion to professional duty.

"A death of this kind is one that deserves more than passing notice. The Bar Association has, therefore, called this meeting of the bar generally of the District in order that a last tribute of respect may be paid to the memory of this man who stood so high at the bar and in the community. As president of that association it becomes my duty to call the meeting to order, and to call for nominations for a permanent chairman and secretary."

Remarks of Mr. Chief Justice Clabaugh.

On motion of Mr. William F. Mattingly, Mr. Chief Justice Clabaugh was elected chairman of the meeting and Mr. Wharton E. Lester secretary. On taking the chair, the Chief Justice said:

"Gentlemen, as your president has said, it has become the sad duty of the members of the bar of the District to meet and pass proper resolutions in respect of the memory of our friend and brother, the late Judge Cole.

"Without anticipating any remarks that may be made, I am sure you will permit me to say a word at least in respect to him.

"Associated as I was for several years with Judge Cole upon the bench, in the law school, and socially, as I met him after he left the bench, I am impressed with the thought that he was an exceedingly rare man. Like all of us he had his frailties, but they were so slight in comparison with his virtues that they are forgotten today.

"His life was one of absolute rectitude, and a rectitude that seemed to be so interwoven with gentleness of nature that one almost thought he never knew an unkindness toward a human being.

"Judge Cole was a man of wonderful powers for work. He never, so far as I knew him, in any way spared himself. He was always willing and anxious to bear the burdens of others, and I have never known the time when he was called upon to take up and fulfill the duties imposed upon some one else that it was not done gladly and without stint.

"As I have had occasion to say once before, he had what is to my mind one of the rarest virtues. In all the time that I knew him, in the close association we had, I never heard him say an unkind word about any human creature. If he had any feeling toward any man that was not kindly, he kept it to himself; and to my mind that is one of the rarest virtues.

"So far as his family relations are concerned, that is a matter that must be to us largely a closed book. We have no right to enter into them. But this much I may be permitted to say, that the devotion of Judge Cole, as a father and as a husband, was most beautiful, and his is an example which should be emulated by all.

"It seems to me it is the right and duty of this bar to lament the death of one whom we all loved.

"The chair is now ready to hear any remarks that may be made."

The following named gentlemen were appointed as a committee on resolutions: Mr. William F. Mattingly, Mr. Nathaniel Wilson, Mr. A. S. Worthington, Mr. R. Ross Perry, Mr. J. J. Darlington, Mr. George E. Hamilton, and Mr. R. Golden Donaldson.

In behalf of the committee, Mr. William F. Mattingly submitted the following resolutions:

"*Resolved*, That the death of Hon. Charles Cleaves Cole, for the past twenty-seven years an eminent member of this bar, and during eight years of that period an honored associate justice of the Supreme Court of this District, is an event deeply to be lamented as a loss which will be gravely felt by the bench and bar of the District of Columbia, its business and general interest, and the community at large.

"*Resolved*, That as a member of the bar, as United States district attorney, as a judge, as a law professor in one of the leading institutions of learning at the National Capital, and in every professional and private relation, the life of our now departed associate and friend was characterized by an indefatigable industry, a tireless capacity and willingness for labor, a clearness of comprehension and vigor of statement, a sense of fairness and right and a constancy of effort toward their accomplishment, a sincerity of character, a personal unselfishness, a genuineness and a warmth of heart which commanded our respect and admiration while he was with us, and which entitle his name and character to an abiding place in our memory and affection.

"*Resolved*, That our sympathy and regard, with a copy of these resolutions, be tendered his widow and children, and that the court of

Digitized by Google

general term be requested to cause a copy of these resolutions to be entered upon its records."

In presenting the resolutions, Mr. Mattingly spoke as follows:

Remarks of Mr. William F. Mattingly.

These resolutions, Mr. Chairman, forcibly remind us that we are again brought face to face with the ever-recurring mystery of death. While it is as certain an incident of life as birth itself, yet it is always a shock. But when one of our own brotherhood, who has won our esteem, is taken from our midst we mourn his loss, and our hearts are filled with a desire to pay some tribute to his memory, to do something to testify the regard and affection we had for him.

This assemblage, these resolutions, are the evidences of that feeling. For the dead we can do nothing. Personally, I feel that when a man in the ripened maturity of all his powers, in the full possession of all his faculties of mind and body, in the enjoyment of the good will, the respect, the kindly regard, the esteem, the affection of those among whom his life was cast, who has been spared a long, lingering, and painful illness, the mortifying and friend-losing decay of his mental faculties, and the slow weakening of his physical organism is suddenly taken from us, he is not to be pitied. I feel that he is not to be regarded as unfortunate, but that on the contrary we ought to rejoice that so far as he is concerned life's strifes, worries, afflictions, and troubles are ended, and that he has entered upon that eternal life of blissful peace and rest.

But while we can do nothing for the dead we can do much for the living—for ourselves, for the grief-stricken family. We can profit ourselves by thinking of this beautiful example of an honorable life long spent in an honorable profession. We can derive consolation by giving public expression to our sorrow. But for the bereaved family there is no consolation. There is some alleviation of sorrow, some satisfaction, in their knowing that the memory of their beloved dead is appreciated by those who toiled by his side in the daily tussle of life, who knew him, who measured up his every trait, who honored him, who respected him, and who mourn his death as their loss.

Judge Cole's life for the past quarter of a century has been, to a gradually lessening number of us, an open book. Its purity no one can dispute. His ability was recognized by all. We recall his pleasant smile, his genial manner, his hearty handshake. We recall him in civil life as the loyal lawyer, devoted to the demands of his profession. We recall him in official life as the able and efficient district attorney and judge. Loyalty to duty was ever his characteristic. This loyalty impelled him as a young man to recognize his duty to his country and to unite with its defenders in the civil war, in which he acquitted himself with credit and distinction, earning and receiving promotion. It impelled his activity in various charitable works, in doing what he could as a loyal citizen to promote the prosperity and welfare of this Federal city. In performing that noble duty he became a teacher of youth in the line of his profession.

Moreover, he recognized his duty to God. He was a loyal Christian, and his Christian faith induced his conviction that—

> "There is no death!
> What seems so is transition;
> This life of mortal breath
> Is but a suburb of the life Elysian,
> Whose portal we call death."

I move the adoption of the resolutions.

Remarks of Mr. George E. Hamilton.

There are times when words, however sincerely spoken, are altogether inadequate to properly convey our thoughts and feelings, and, Mr. Chairman, the occasions when the District bar comes together from time to time to fittingly commemorate the death of some one of its members, emphasize with peculiar force the poverty of language to appropriately express our sorrow and regret, or to voice the tribute we would pay our dead. But after all, there is today little need of any expression by word of sorrow or of praise. The sense of loss weighs heavily upon us all. The memory of our departed brother lives, and will live long in the hearts of his fellows. His achievements are indelibly impressed upon the records of our courts, and these are his all-sufficient praise, his best and most lasting monument.

Charles C. Cole for more than a quarter of a century as a lawyer in active practice, as United States district attorney, and as one of the associate judges of the Supreme Court of the District of Columbia, was an important factor in the administration of justice in all of the Federal courts at Washington; and, whether viewed as lawyer, as prosecuting attorney, or as judge, his career is marked by successful effort, by signal ability, and always by duty well and faithfully performed. His measure of success in the profession of the law was filled even to the brim, nor was this success of accidental or easy accomplishment. It was created and built up by unremitting toil, by force of intellect well directed, and by a character and an integrity strong enough to rise above adverse conditions, and to overcome circumstances that would have shackled and forever held down a man of weaker mold.

His life was a life of effort and struggle, animated always by honorable ambition, and crowned by merited success.

Mr. Chairman, when we who knew him have passed away, the records of our courts, many of whose pages are illuminated by his professional and judicial acts and triumphs, will remain, and from these those who come after us will know that Charles C. Cole was an able lawyer, a strong and fearless advocate, an impartial and learned judge. And what more could a lawyer ask or wish for?

Again I say that when such a man has passed over the bar, there should be no sound of mourning, there need be no song of praise.

Mr. Chairman, I second the motion that the resolutions, as read, be adopted.

Remarks of Mr. Walter C. Clephane.

Mr. Chairman, after what has been said, and so beautifully said, about the character of Judge Cole, I hesitate to perform, or to attempt to perform, the duty which I feel is cast upon me, and which it has been suggested I should en-

Digitized by Google

deavor to carry out—of saying a few words indicative of the feeling which the juniors at the bar entertained toward Justice Cole.

I feel honored in that I know he was a friend to me. I feel that nearly every other man, aye, every other man, at this bar could say the same, that Judge Cole was a friend to him, individually.

The personal element which entered into our relations with Judge Cole is too sacred a bar for me to endeavor to raise. But I do want to refer to three traits in his judicial character which are well known to us all, but upon which I think we should for a moment dwell.

The first is that of his eminent fairness. We have seen him ascend the bench, and in a few moments indicate by some remark what he thought of the question before him for discussion, and yet that never deterred anyone from proceeding to expound the views which he desired to bring to the attention of the court, because every member of the bar knew that notwithstanding any preconceived opinions which Judge Cole might have formed, he would listen as attentively and earnestly to an argument as if there had been no opinion on his part whatever, and the final result was never influenced in the slightest degree by any impression which he might have entertained upon ascending the bench.

Not only was this so, but we frequently found that after he had delivered his opinion, upon motion for a new trial he would gladly reverse that opinion when he found he was in error in his own judgment.

The next trait to which I refer is one which we might expect to be found in a man of such stamp as this—that is, his courtesy on the bench. It made no difference what the experience or lack of experience on the part of the man who addressed. him might be, he always received the same courtesy and kindly treatment that the closest friend and leader of the bar would receive. So that in standing before his honor, the youngest junior at the bar felt that he was laboring under no other disadvantage than that of immaturity and inexperience; certainly that he was under no disadvantage so far as the reception of his argument by the court was concerned.

The third trait to which I refer is—if I may call it so—his approachableness. The experience of the judicial career must render it extremely difficult for a judge, who rightly receives all the deference due from the bar and from the bench while on the bench—to cast all this aside, and when off the bench to treat the members of the bar as his friends, and, may I say it, equals. Certainly in the case of Judge Cole we found that we could approach him anywhere and everywhere, and receive the same cordial, kindly greeting we would receive from one who had not ornamented the bench, as did Judge Cole.

These are three of the reasons, Mr. Chairman, why I personally mourn, and why I am sure my fellow members of the profession feel the keenest regret at Judge Cole's death.

Remarks of Mr. R. Golden Donaldson.

Mr. Chairman, the committee thought it might be proper and appropriate for me to say a word, but I assure you, sir, that my heart is so filled with sorrow that even if what has been said had not been so well said I could say nothing. As I stand here his kindly, genial face appears before me, and his life, as I knew it, is open; and I can do nothing more than say now that all that I have been able to do here I have been able to accomplish because that good man helped me on.

I went into the office of Judge Cole and his brother about fourteen years ago, a little boy in knee trousers, poor, and I stayed with them until Mr. Wyman Cole died. My relations with the family had then grown to be such that it was thought desirable that I should undertake to succeed him in the practice of our profession. Then, there being no sons, it was thought that perhaps the Judge might help me on, and so when he resigned from the bench we took offices together and afterwards formed the partnership.

I can not add a word to what has been said about his beautiful character. We all knew him as a friend; we knew what a beautiful Christian he was; we all know of his devotion to his family; we all know of the untiring energy which he at all times displayed, and I fear me, sir, that it was because of his zeal in the performance of his duty that he departed, perhaps, as early as he did.

We were sitting in the office on Saturday afternoon, and the marshal telephoned over and wanted to know if the judge would not go to lunch, as was his custom on some occasions when he could find the time. At that time we were conferring about this will case which is now on trial. He looked up and said, "Ought I to go?" and I said, "Judge, you have been laboring so hard recently, I think you should. We will take this up tonight." He said, "Very well," and he went. Afterwards he went home and ate his dinner, and I went down to his house that evening—it was only Saturday a week ago—and we began to talk about this case. We had talked about two hours, and then he stopped and said, "Let us have a little rest," and we did. He had a couple of bottles of ginger ale brought up, and we sat there for a few moments and talked about matters not connected with the case. He laughed, and his laugh was just as hearty and just as natural, and suddenly he said, "I am ill; I want to go to bed;" and he did. The next morning he was an exceedingly ill man, and he never arose.

But I agree with Mr. Mattingly that it is a blessing that he has been spared a lingering illness. It is a blessing that he can meet his Creator and God, as I know he has done, in the full possession of his faculties; and I know it will be said of him, "Thou good and faithful servant." I can say no more, sir.

The resolutions were unanimously adopted by a rising vote, and the meeting thereupon adjourned.

Sales—Mortgage of Property Conditionally Sold.—Consent by the seller in a conditional sale that the property be mortgaged to a certain corporation does not authorize its mortgage to another corporation.—Lorain Steel Co. v. Norfolk & B. St. Ry. Co. (Mass.), 73 N. E. Rep. 646.

Digitized by Google

Supreme Court of the District of Columbia.

MARGARET A. HILL ET AL., COMPLAINANTS,

v.

AMANDA MOORE ET AL.

PRIVATE CEMETERY; RIGHT OF LIFE TENANT TO GRANT BURIAL PERMITS.

The owner of a tract of land on which he had conducted a private cemetery conveyed the same to trustees for the sole and separate use of his wife for life, she to have the rents, issues, and profits, and at her death it was disposed of to others. The trustees were to sell and convey any or the whole of the land upon her direction, the proceeds in such case to be held so that she should have the income. After his death the widow continued the business in his name, granting permits to bury and receiving the consideration therefor. The remaindermen, contending that this was in excess of her rights, brought suit for an injunction and receiver. *Held*, that the wife had the right to grant such permits, her rights with respect to the property being analogous to that of a life tenant to continue the operation of mines or quarries, even though the corpus of the estate is thereby diminished or even exhausted, and not being liable to impeachment of waste therefor.

In Equity. No. 24,912. Decided April 25, 1905.

HEARING on bill and answer of a rule to show cause why an injunction should not be granted, etc. Rule discharged.

Mr. W. Mosby Williams for the complainants.

Mr. Irving Williamson for the defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

This is a rule to show cause why a restraining order should not be granted and a receiver appointed, and has been heard upon bill and answer.

The facts are these: Jacob Moore, now deceased, owned a tract of about 7½ acres on which he resided and where he had a private cemetery which he had conducted for some twenty years. He deeded the tract to trustees for the sole and separate use of his wife during her life, she to have all the rents, issues, and profits thereof, and at her death it was disposed of to others. The trustees were to sell and convey any or the whole of it upon her direction during her life and the proceeds were in such case to be held so that she should have the income thereof. He had made his livelihood out of the business of keeping the cemetery. After his death his widow continued to carry it on in his name, granting permits to bury and receiving the consideration therefor; and such permits were treated by the defendant herself, in argument, as conferring a permanent right to the use of the soil for the purposes of graves. Now, the question is, whether the life tenant is exceeding her right in granting such permits? The defendant contends that the deed, construed and interpreted in the light of the circumstances, must be held to grant such a right. The complainants contend that such a power would be equivalent to a power to convey the whole tract, piecemeal, and is inconsistent with the character of a life tenancy and with the express provisions of the deed.

Since the case was argued counsel have submitted memoranda of authorities, among which we find this statement:

"A person making an interment in a cemetery in the absence of a deed properly executed does so under a mere license, and his exclusive right to make such interments in a particular lot would be limited to the time during which the ground continued to be used for burial purposes." 3 Am. & Eng. Ency. L., 1st ed., 50.

It might be said that those receiving and relying upon the permits issued by the defendant take them at their own risk, and if she has no authority to grant them beyond her own tenancy, that the complainants will not be prejudiced thereby, as they may require the removal of the bodies at the expiration of the life term, and so have no need of an injunction.

But it is maintained on the part of the complainants that the permits, although not formally executed deeds, do confer a permanent right so far as the same is possessed by the defendant, and that as they reside in the neighborhood and are informed of her course of action, they may be estopped if they do not take active measures to prevent the continuance of the practice.

For the purposes of this opinion we shall adopt the complainant's view upon this question because it seems to us that the defendant is right upon her main contention.

It is apparent from the bill and answer that the intention of Jacob Moore was to provide for the support of his widow during her life, and that this result could not be accomplished by merely setting apart the sums received from the sale of graves and paying her the income upon the fund derived from such sales.

The amounts received for graves run from $1.50 to $6, and the answer shows that during the period since the death of Jacob Moore the net proceeds of all sales amount to a fund so small that the income to be derived therefrom could be only characterized as insignificant. The grantor in the trust deed evidently expected that she would continue to carry on the cemetery as he had done, and that was the use which he expected her to make of the property. The whole tract contained nearly eight acres, and only a small fraction of it has been actually used for burial purposes, although the whole has been platted. He wished to provide for the sale of a considerable portion of the tract if his widow should find that necessary, and so inserted a provision to that effect, but we can not regard the provision for a sale of the whole or a portion of the tract as referring to the sales of graves or the permits to bury, because we do not think that the grantor in the trust had any such idea in mind.

In our view of the case it stands like those involving the right of a life tenant to continue the operation of mines or quarries. In such case, according to all the authorities, the life tenant has the right to continue the operation, although the corpus of the estate is thereby diminished or even exhausted, and is not liable to impeachment for waste therefor.

In Billings v. Taylor, 10 Pick. 460, a husband died seized of a tract of land of 4 acres in extent, consisting of a slate quarry, mostly below

Digitized by Google

the surface, but partially above. One-quarter of an acre had been dug over, and the practice was to take a section of 10 or 12 feet square on the surface and to go down to a certain depth and then begin on the surface again. It was held that not only that portion of the quarry which had been actually dug, but the whole extent owned by the husband, must be considered as opened, and so the widow was entitled to dower in the same.

In New York the right of a dower has been held to attach to a bed of iron ore, and that such a bed of considerable extent must be regarded as opened, although the openings which had been wrought by the husband had been partially filled up and abandoned. Coates v. Cheever, 1 Cow. 460.

In Reed v. Reed, 16 N. J. Eq. 248, it was held that a tenant for life is entitled to work any mine, quarry, claypit, or sandpit which has been opened and used by the former owner, that being the mode of enjoyment of the land to which he is entitled.

The same rule is recognized in Gaines v. Green Pointed Iron Mining Company, 32 N. J. Eq. 86, 101. The law gives to the life tenant the right to pursue by mining the same means of deriving profit from the lands which were taken by the former owner, though it be destructive of the substance of the estate. Rockwell v. Morgan, 2 Beav. 384. He may sink new shafts better to reach the contents of the vein and to reach the lower strata.

Ward v. Carp River Iron Company, 47 Mich. 65, was an action of trover by the purchaser of an iron mine at an execution sale after the time for redemption had expired and he had received his deed against a purchaser from the judgment debtor, for iron ore which had been taken from the mine after the sale. It was held that the action could not be maintained, there being no presumption of law that the taking of ore from an open mine is waste on the part of one having rightful possession. In this case the judgment debtor had a right to continue to use the lands until the expiration of fifteen (15) months, doing no injury to the freehold.

In Russell v. Merchants' Bank of Lake City, 47 Minn. 286, it was held that where works for the manufacture of brick had been constructed and clay beds opened and worked by joint owners upon a common property a cotenant could not enjoin his cotenant in possession from continuing the business in the customary way.

Great stress was laid in the argument upon the use of the words in the trust deed "rents, issues, and profits," which it was said could not be held to include such a use as the land is being put to in this case; but we think the use in this case can hardly be distinguished in principle from the use in the cases already cited.

The result is that the rule to show cause why an injunction should not be issued or a receiver be appointed must be discharged.

Marriage—Impotency.—Where a wife brings suit for the annulment of the marriage on the ground of the impotency of the husband, the court has, as an incident of its jurisdiction of such actions, the power to require the husband to pay her counsel fees pendente lite—Gore v. Gore, 92 N. Y. Supp. 634.

Elevator Accident—Negligence.

In the case of Green, Admx., v. Urban Contracting and Heating Company, recently decided by the Supreme Court of New York (Appellate Division, First Department), and reported in the New York Law Journal, the action was to recover damages for the death of the plaintiff's intestate, alleged to have been caused by the negligence of the defendants in the operation of a passenger elevator. In the trial court there was a verdict and judgment for the plaintiff; but the Appellate Division reverses this judgment, holding that plaintiff's intestate was guilty of contributory negligence and also that there was no evidence showing that defendants were negligent. The opinion of the court, by Ingraham, J., is as follows:

The defendant Oppenheimer was the owner of a building at the corner of Seventeenth street and Fifth avenue, in the city of New York, having purchased the building in January, 1904. In this building there was a passenger elevator on the Fifth avenue front and a freight elevator on a passageway opening in Seventeenth street, in the rear of the building. The firm of Peller Brothers occupied two of the lofts in the building, and their employees were in the habit of using the freight elevator for access to the Peller lofts. This elevator was operated by electricity, and when the defendant Oppenheimer purchased the premises he found in existence a contract made by the former owner and the defendant Urban Contracting and Heating Company by which the contracting company agreed "to furnish and pay a competent engineer, who will operate the freight elevator during the summer months, take proper care of the electric elevators, pumps, etc., in the building known as 91 Fifth avenue, in the said city of New York," and "to furnish and pay one competent elevator attendant, in uniform, for the passenger elevator, and one elevator attendant for the freight elevator, during the heating season, the hours for elevator service and heat to be in accordance with tenants' leases," and, further, to furnish all the coal and wood and other supplies required for the proper operation and care of the boiler, elevators, and pumps, and to keep them all in thorough order and repair at its own cost and expense, and to attend to all minor repairs of the building. In consideration of such services the owner of the building was to pay to the Urban Company $1,600 per annum.

The defendant Oppenheimer, finding this contract in existence, continued it by a verbal agreement by which the Urban Company undertook to manage the machinery and elevators and to employ the elevator boy and engineer in control thereof. During the night the electricity was shut off so that the elevator could not be moved, but in the morning the engineer employed by the Urban Company was in the habit of coming into the building about 6 o'clock, looking over the machinery and turning on the current so that the elevators could be moved. It was the duty of the eleva-

Digitized by Google

tor boy who was employed by the Urban Company under its contract with the defendant Oppenheimer to run the elevator. The elevator was moved by a rope passing through the elevator and down the elevator shaft into the cellar, so that when the electricity was turned on by pulling this rope the elevator could be made to ascend or descend, as required.

On the morning of the 16th of April, 1904, several employees of Peller Brothers arrived at the building to go to work. There was evidence that one of the two doors closing the entrance to the elevator on the ground floor was open, but that the elevator boy was not there; that several of the employees of Peller Brothers went into the elevator and stood there, waiting to be taken up to their work; that the plaintiff's intestate, who was also an employee of Peller Brothers, came and stood at the opening into the elevator, one foot upon the floor of the elevator and the other on the floor of the building, and that the elevator for some unexplained reason started up, carrying the plaintiff's intestate up between the elevator and the wall, causing him an injury which resulted in his death.

The plaintiff has brought this action against both the owner of the building and the Urban Contracting and Heating Company, claiming that they were both guilty of negligence. The evidence is undisputed that the elevater itself was in good order, and it is not claimed that the accident was caused because of defective machinery or of any other defect in the elevator or the building. After the power had been turned on, any one of those upon the elevator, by pulling this rope, could have caused the elevator to move, but the evidence is undisputed that without a movement of the rope the elevator could not move, as the machinery was so arranged that if the rope had been in a position to allow the elevator to move when the power was turned on, the sudden current of electricity would have caused a fuse to burn out, which would have prevented the elevator from moving at all. I think that, upon the whole evidence, a finding that the motion of this elevator was caused in any other way than by a movement of the rope in the elevator would be against the weight of evidence.

When these employees of Peller Brothers arrived in the morning the elevator boy was not present, and instead of waiting outside of the elevator, where they would have been safe, they took their places in the elevator, waiting there for the boy to come, and the plaintiff's intestate then placed himself partly in the elevator and partly on the floor of the building, in a position of danger in case the elevator should move, and stood there talking to his associates. The elevator did move and the injury resulted because the plaintiff's intestate had placed himself in this position of danger. There was certainly no invitation to the plaintiff's intestate, either by Oppenheimer, who was the owner of the building, or by the Urban Contracting and Heating Company, who was operating the elevator, to place himself in this position. In the absence of the elevator boy these men had no business in the elevator. It stood there empty, without anyone in control of it, and was not in a condition for use. Neither of the defendants could have anticipated that persons wishing to use the elevator would stand upon it and wait there for the boy employed to operate the elevator to come.

But whatever may be said about these men who stood in the elevator, certainly one placing himself at the entrance of the elevator in such a position that the slightest movement of it would be certain to cause an injury, was not in a position to which he was invited by either of the defendants. If the car had suddenly started as he was walking into the elevator a different question would be presented. The evidence of the plaintiff's witnesses is clear that the plaintiff's intestate stood in this position talking to the other men for some appreciable time before the elevator started. If he had been outside of the elevator he would have been safe, but placing himself in this position—a position obviously dangerous—was not the act of a prudent person, and an injury that resulted from his thus placing himself in such a position is not one for which the defendants are liable.

As before stated, the machinery was in perfect order. There is no evidence that the elevotor was caused to move by the act of any agent or employee of either of the defendants, and there is, therefore, nothing to justify a verdict of negligence against either of the defendants. The elevator boy at the time had gone down into the cellar and was preparing for his day's work. The elevator had not been used on this morning. No one had been invited on this morning to use it, and until the boy whose duty it was to operate the elevator had arrived and taken charge of it it was not in a condition to be used.

Assuming that the maxim res ipsa loquitur would apply, and that in the absence of some explanation the sudden starting of the elevator would justify a submission of this case to the jury as to whether there was any negligence on the part of those responsible for its management, from uncontradicted evidence it appears that the elevator was in perfect order, and that the accident was not caused by any act of negligence of the defendants. Any presumption, therefore, that would have justified a finding of negligence because of the accident is rebutted, and there is no ground upon which a finding of negligence can be sustained.

In Griffin v. Manice (166 N. Y. 188), the duty of the owner of a building to those using an elevator operated and maintained by the owner was discussed, and the conclusion was that the owner of the building owed those using the elevator the duty of using at least reasonable care in seeing that the premises were safe, and that if a person thus using the elevator was injured by an accident which could not ordinarily have occurred had the elevator machinery been in proper condition and properly operated, the court was justified in permitting the jury to infer negligence from an accident. The judgment in that case having been reversed there was a new trial, when the defendant's evidence was taken, and it again came before this court on appeal (74 App. Div. 371), and the question presented was whether or not the evidence as a whole justified a finding that the defendant was remiss in his duty in exercising the degree of care which the law imposed upon him,

Digitized by Google

namely, ordinary care for the protection of the plaintiff's intestate, and after discussing the evidence, we held that a finding of negligence on the part of the defendant was not sustained where it appeared that there was no defect in the machinery or any indication to the defendant or his employees that there was any danger in the operation of the elevator, and that the direction of a verdict for the defendant was proper, and this judgment was affirmed by the Court of Appeals (174 N. Y. 505). This, I think, is a decisive authority against sustaining a verdict for the plaintiff in this case.

Here the undisputed evidence is that the machinery was all in perfect order; that the defendant's employees were engaged in getting ready to start the elevator in the morning; that before it was ready for use, and before an employee of the defendants was actually in charge of it, a tenant in the building walked into the elevator, standing in a position which was dangerous if there was a movement of it, without any invitation of the defendants or their employees, express or implied; and that an unexplained movement of the elevator resulted in an accident. For this the defendants were not liable.

The case of Ingrafia v. Samuels (71 App. Div. 14), is not at all in point, for there the accident was caused by the negligence of the elevator man, who deliberately left the car before the others, who were passengers upon it, leaving them there unprotected, and it was this act of the elevator man that was the basis of the finding of negligence. In sustaining a verdict in that case the court said: "His negligence, therefore, in thus leaving the car and its occupants before they had opportunity to safely alight, in view of his knowledge or means of knowing that such an accident could occur, and was to be guarded against, was a failure to observe that reasonable care which, as stated in the recent case of Griffen v. Manice (166 N. Y. 188), is required in the maintenance and operation of an elevator."

In this case there is no evidence that the operation of the car had commenced, that the plaintiff's intestate or his associates had been invited to enter the car, or that the agents of the defendants could have anticipated that the defendant's employees would get upon the elevator and wait there rather than to remain in a place of safety outside of the car. The mere fact that the door of the elevator was open was not an invitation for any one to get into the elevator when no one was in charge of it.

If this view of the case is correct, the plaintiff's intestate was guilty of contributory negligence as a matter of law in placing himself in this position, with one foot upon the elevator and the other on the floor of the building, when there was no one in charge of the elevator, and it was his negligence that caused the injury, and there is no evidence to show that the defendants or either of them were negligent.

The judgment and order must, therefore, be reversed and a new trial ordered, with costs to the appellants to abide the event.

McLaughlin and McLaughlin, JJ., concur.
Patterson and O'Brien, JJ., dissent.

Headquarters for legal blanks of all kinds.

Master and Servant—Injuries to Servant—Electric Light Trimmer—Defective Poles—Safe Place to Work—Negligence—Assumed Risk.

In Dawson v. Lawrence Gas Light Co., decided by the Supreme Judicial Court of Massachusetts, Essex, in June, 1905 (74 N. E. 912), it appeared that plaintiff, an electric light trimmer, was injured by the fall of an electric light pole which he had climbed and which, after the accident, was found to be decayed below the ground. Plaintiff had no experience with reference to such poles, and it was no part of his duty to examine them. Defendant's superintendent testified that he did not know what the life of such a pole was, but did know that it ought to be inspected, but did not know how often the poles were inspected at the time of the accident, and that there was no special time for examinations. It was held that plaintiff did not assume the risk of such injury.

It was further held that defendant being bound to furnish plaintiff with a safe place to work, such facts established negligence on its part. The court said:

This is an action of tort for personal injuries sustained by the plaintiff from the fall of a pole erected by the defendant for the support of wires and an electric arc lamp.

The declaration contains two counts under Rev. Laws, chap. 106, sec. 71, and one at common law. While the pleadings are referred to in the bill of exceptions, no question is made in regard to them. It appeared in evidence that the pole was of hard pine, squared, about 28 feet high, and in the spring before the accident it had been painted by the employees of the defendant from the surface of the ground to the top. It was provided with iron spikes or bolts inserted upon alternate sides of the pole for climbing. It had one arm extending into the street, but the electric light was placed on the top. Two electric wires ran from it to poles on the other side of the street. The accident happened on July 9, 1903. At this time the plaintiff was 41 years of age and weighed about 175 pounds. The plaintiff entered the employ of the defendant in September, 1902. Before this he had had no experience in this kind of work. He was employed as a lamp trimmer, and his work was each day to clean the electric lamps, remove the old carbons, and insert new ones. He was shown his work and what he had to do. About one month before the accident his route was increased, so that twenty-nine more poles, one of which was the pole that fell, were added to his route. The plaintiff had in all something over fifty poles to look after, but out of these there were only eighteen that he had to climb. On the rest of the poles the lamp could be lowered by means of a rope.

Upon the day of the accident he ascended the pole in question by placing a ladder against it and then climbing up upon the iron bolts or spikes until he got to the top. Then there was a crash, and the pole fell, and the plaintiff was thrown to the sidewalk and sustained the injuries complained of. The plaintiff had ascended the pole in the same way every day for about a month before the accident, had never seen anything the matter with the pole, or anything to call his attention to it, and never had been instructed to report any defect or trouble with

Digitized by Google

the pole. The plaintiff testified that at the time of the accident there were five or six linemen in the employ of the defendant; that the linemen erected and took down the poles and strung the wires; that he had nothing to do with their erection or care; that he never had worked as a lineman or painted any poles, and that his duties were as previously stated. It appeared that the pole was not guyed. Several witnesses were called as to the condition of the pole immediately after the accident. They all agreed that it was rotten below the surface of the ground. Some placed the rotten spot at two or three inches below the surface, and some at five or six inches.

One Sargent, the superintendent of the defendant, called as a witness by the plaintiff, testified on direct examination that there were six or seven linemen in the employ of the defendant, whose duty it was to erect and take down poles, to string the wires and paint the poles; that the poles were not painted at any set time, but when they needed it; that they were painted from the surface of the ground to the top, the intention being to cover all that was exposed to the weather; that the linemen were provided with small poles with steel points at one end, which could be and were used for the purpose of determining whether the electric light poles were in good condition; that it was the duty of the linemen to examine the poles and see their condition; that this can be done by prodding at the bottom of the poles, and that their condition can be detected by prodding down into the ground, if it is not too far down, and that he did not think that five or six inches below the surface of the sidewalk was too far down. On cross-examination the witness testified that the pole was a square hard pine pole; that he did not know what its life was, but knew that it had a life, and ought to be inspected once in a while; that he did not know how often the poles of the defendant were inspected at the time of the accident; that there was no special time for the examination of poles, and no special interval between examinations.

The defendant introduced no evidence, and at the close of the plaintiff's testimony asked the judge to rule that there was no evidence which would authorize the jury to find for the plaintiff, and also asked that the judge direct a verdict for the defendant. The judge refused both of these rulings. The case was submitted to the jury under instructions, which were not otherwise excepted to, and the jury found for the plaintiff.

The contention of the defendant is that the danger of the pole falling was an obvious one; that the plaintiff assumed the risk, and that there was no evidence which would warrant the jury in finding that the defendant was negligent. The defendant relies upon the case of McIsaac v. Northampton Elec. Lighting Co., 172 Mass. 89, 51 N. E. 524, 70 Am. St. Rep. 244, and Tanner v. N. Y., N. H. & H. R. R., 180 Mass. 572, 62 N. E. 993. These were cases of experienced linemen, as has been already pointed out in Lord v. Wakefield, 185 Mass. 214, 216, 217, 70 N. E. 123.

In the present case the plaintiff was not a lineman, but a cleaner of lamps. It was no part of his duty to inspect the poles. This duty the defendant had delegated to its linemen, as appears from the testimony of the superintendent of the defendant company. It was the duty of the defendant to furnish a safe place for the plaintiff to work, and the duty of inspection which the defendant recognized could not by being delegated, relieve the defendant from liability. There was no obvious risk which the plaintiff assumed. The danger was underground. There was no evidence that the plaintiff knew that the life of a pole was limited. The superintendent knew this fact, but testified that he did not know what the life of this pole was, "but knew that it had a life and ought to be inspected once in a while." We are of opinion, therefore, that the defendant's requests for instructions were rightly refused, and the case was properly submitted to the jury. Chisholm v. New England Telephone & Telegraph Co., 185 Mass. 82, 69 N. E. 1042.

Automobiles—Duty of Driver to Slow Down When Turning Corners.

In Buscher, administrator, v. New York Transportation Company, decided by the Appellate Division of the Supreme Court of New York, and reported in the New York Law Journal, the action was to recover damages for the killing of a child occasioned by the alleged negligence of the defendant. It is held that it is the duty of the operator of an automobile to slow down and operate the machine with care in turning street corners so as to avoid injury to pedestrians. It is further held that in the case at bar the question of the contributory negligence of the decedent was for the jury. The opinion of the court is as follows:

The action is brought to recover damages for the death of plaintiff's intestate, which, it is averred, was occasioned by the negligence of the defendant. It was admitted upon the trial that the decedent, a child 8 years and 3 months of age, was killed by being run over by an automobile operated and controlled by an employee of the defendant; that the accident happened at the corner of Fortieth street and Tenth avenue, in the city of New York, on the 14th day of April, 1902; that the automobile was the property of the defendant, and that at the time the employee operating it was engaged in the defendant's business. At the close of the plaintiff's case the court dismissed the complaint upon the ground that there was no evidence tending to show the absence of negligence contributing to the injury upon the part of the deceased.

The evidence would have authorized the jury to find that the deceased was a bright, active boy, capable in some degree of caring for himself while on the street. The proof upon the part of the plaintiff tended to establish that the automobile was running at a very rapid rate of speed westward on Fortieth street; that as it reached the corner of the street it turned northward into Tenth avenue without slackening its speed and without giving any signal of its approach. Two witnesses crossed the street ahead

Digitized by Google

of the automobile before the accident happened, and were obliged to hurry to get out of its way. At that time the boy was about 15 feet north of the corner of Tenth avenue, standing on the sidewalk. As the witnesses crossed the street their backs were toward the automobile, and almost immediately they heard a scream, turned and saw the hind wheel of the automobile passing over the boy's body, about 2 feet distant from the curb.

We think the evidence was sufficient to justify a finding that the defendant was guilty of negligence in the operation of the automobile, and we are also of the opinion that the question was for the jury as to the contributory negligence of the deceased. A person, whether adult or infant, had the right to assume that the defendant, in the operation of the automobile, would exercise care and respect the rights of pedestrians when it had occasion to turn the corner of the street. Due care in its operation required, under such circumstances, that the vehicle should be slowed down and operated with care. At such place the operator was bound to take notice that people might be at the crossing or entering thereon, and this obligation upon the part of the operator of the machine was one which a pedestrian would have a right to assume would be observed. Upon the proof the jury were authorized to find that the operator of this machine exercised no care whatever in turning the corner of the street where the accident happened. Under such circumstances, whether the deceased was guilty of contributory negligence, or whether his act constituted the proximate cause of the accident, was a question of fact for the jury. Costello v. Third Ave. R. R., 161 N. Y. 317.

In McDonald v. Met. St. Ry. (80 App. Div. 233), it was held by a unanimous court that "in the case of infants under the age of twelve years the burden of proof is upon the defendant to show the possession by such infant of sufficient mental capacity to understand, appreciate, and guard against the situation in which it is placed, and that plaintiff may rest in respect of such question upon the legal presumption which protects the infant from the imputation of negligence, unless it be a case where the negligence of the infant is imputable to the parent." There is no question in this case of negligence imputable to the parent. While it is true that an infant, even of tender years, must be held to the exercise of some care (Adams v. Nassau Elec. R. R., 41 App. Div. 334), yet in the case of an infant under 12 years of age, whether he be guilty of contributory negligence or not, where it does not appear that he was entirely lacking in care, becomes a question of fact for the jury, and it is error for the court to determine such question as matter of law.

It follows, therefore, that the judgment and order should be reversed and a new trial granted, with costs to the appellant to abide the event.

All concur.

Arrest by chief of police, who had a warrant in conjunction with deputy sheriff, held lawful. —Lee v. State (Tex.), 86 S. W. Rep. 804.

Accident Insurance—Risks Insured—Total Disability.

In James v. U. S. Casualty Co., decided by the Court of Appeals at Kansas City, Mo., in June, 1905 (88 S. W. 125), it was held that where an accident policy described the duties of insured, who was a queensware merchant, as consisting of "office duties and traveling," and insured against loss of time from injuries, but the parties, on trial of an action on the policy, introduced evidence as to whether plaintiff was disabled from performing any of his duties, the policy should be regarded as insuring against inability to substantially perform the general occupation of queensware merchant and not merely against inability to perform office duties and traveling.

It was further held that a provision in an accident policy that it insured against "total" inability to perform "any part of the duties" of insured, who was a merchant, can not be construed literally, but means inability to perform any substantial part of the business. The court said in part:

The evidence disclosed that plaintiff fell from a moving street car and was severely injured on and about the knee; that he was confined to his bed a small part of the time and went upon crutches all of the time for which he claims indemnity; that, excepting a time he was absent from the city, he came to his place of business almost daily, where he signed checks, approved orders for goods, and dictated letters. His absence was while he was on a business trip to New York for the purpose of buying goods. But he could not do many of the principal matters pertaining to the business of a queensware merchant. He could not get about the store and was compelled to sit in his office in a crippled condition. His wholesale house was a building of five or six stories, and his presence was required in all parts of it. His retail place was several blocks away, and his duties required him at each place every day when at home. When in health he looked after customers, sold goods, saw that they were packed and shipped. He supervised the force of employees, including traveling men who sold goods for the house in several States and Territories, and with these he frequently took trips. His efforts at business in New York were hampered by his injury. He could only visit a small number of the many houses he usually dealt with—perhaps only two. He was compelled to travel about in a cab, and to be accompanied by some one to assist him.

The parties were quite liberal in the breadth and scope each allowed the other at the trial of the cause, and that cuts an important figure in the conclusion we have reached, for the rule prevails uniformly in this State that the parties, on appeal are bound by the theory, mode, and manner they adopt in the trial court. Hill v. Drug Co., 140 Mo. 433, 41 S. W. 909. It appears that the policy did not insure plaintiff against a disabling of the performance of the general occupation of a proprietor of a wholesale and retail queensware merchant, for it specifically limited the insurance to the office duties and traveling of such occupation. And so the question should have been, under such limited view of the clause in question: "Was plaintiff wholly disabled from performing office duties and

Digitized by Google

traveling?" The evidence shows that he was, perhaps, not so disabled, for he did, practically, much of the office duties he could have performed had he not been injured, and he did a part of the traveling. But defendant allowed the issues to broaden into the field of the plaintiff's general occupation as a wholesale and retail queensware merchant, for, while objection was made to plaintiff showing that he was substantially prevented from attending to his business as a queensware merchant, an examination of the record will show that no effort was made to confine such business to the two branches, viz, office business and traveling.

In other words, that point on the policy was not made and plaintiff was permitted by defendant to state the relation the injury had to his performing the whole business, defendant's counsel joining in such examination; that is, the parties have interpreted the policy as covering, generally, the entire business of a wholesale and retail queensware merchant. And plaintiff, not to be outdone in courtesy and liberality, permitted defendant to inquire into plaintiff's various other occupations, such as member of the school board, director of other business corporations, etc., with a view of ascertaining if he was wholly disabled from performing the duties devolving upon him in those parts of his business. One might be very well able to perform the duties of a director in a school or gas company and yet be wholly unable to travel or conduct the office of a queensware merchant. So we take the case as we find it, and must, therefore, determine whether the trial court would have been justified, under the evidence, in declaring, as a matter of law, that plaintiff was not wholly disabled from performing the general occupation of a wholesale and retail queensware merchant.

If, as appears from a case cited further on, a physician was insured for that occupation, he might receive an injury which would wholly disable him, physically, from going about to visit patients, yet leave him able to dictate prescriptions from a sick room; or the injury might leave him able to travel around as usual, but mentally unable to give prescriptions. In neither instance would a court be justified in declaring, as a matter of law, that he was not wholly disabled to perform the calling of a physician in the sense of the contract. We therefore hold the contract to mean, not that the assured was rendered absolutely and literally unable to perform any part of his occupation, but that he was disabled from performing substantially the occupation stated in the policy. Young v. Ins. Co., 80 Me. 244, 13 Atl. 896; Wolcott v. Ins. Co., 55 Hun. 98, 8 N. Y. Supp. 263; Hohn v. Ins. Co., 115 Mich. 79, 72 N. W. 1105; Turner v. Ins. Co., 112 Mich. 425, 70 N. W. 898, 38 L. R. A. 529, 67 Am. St. Rep. 428. In the latter case the assured's occupation was that of a real estate agent. His injury was a dislocation of the shoulder, which did not prevent him going to his office every day. Yet the court held that it should not be said, as a matter of law, that he was not wholly disabled within the meaning of the policy. These cases are supported by text writers. 4 Joyce on Ins., sec. 3031.

But stress is laid by defendant's able counsel upon a part of the clause above set out, which itself assumes to define what is meant by "wholly disabled," wherein it is said that the assured must be "totally" unable to perform "any part" of his duties. We do not consider that such provision has any material control over the other portion of the clause. When parties enter into a contract, it must be assumed that they intended that which in certain events or contingencies would mean something and have some effective force. And so it has been held that if a promisory note reads that A promises not to pay B $100, the word "not" will be disregarded, since the parties must have meant something by the execution of the note. Story on Promissory Notes, sec. 12; 1 Parsons, Notes and Bills, 26.

The occupation of a merchant calls for both mental and physical exertion. If "wholly disabled" means that he shall, literally, be totally unable to perform any part of his business, then mental capacity exercised in merely directing, in a single instance, a matter the most trivial—as, for instance, to sweep the floor—or the physical effort of doing it himself, would bar a recovery on the policy. Total mental disability means that one must have his mental faculties entirely suspended, and total physical disability means the loss of power to move. It can not be that the parties intended that before an assured could recover on the policy he should lie the full period of his injury in a state of coma. To interpret the clause in its contractual sense, as defendant seeks to have us do, would render the contract utterly useless to an assured, and would be nothing short, practically speaking, of collecting a premium without rendering a consideration. We therefore find ourselves driven back to the position taken by the authorities on the construction of the first part of the clause, viz, that the disability meant is a disability as to the performance of any substantial part of the business.

Subrogation—Paying Incumbrance for Another—Agreement for Subrogation.

In a proceeding entitled Re McGuire, decided by the United States District Court, N. D. Ohio, in May, 1905 (137 Fed. 967), it was held that one who, at the request of a debtor, furnishes the money to discharge a lien, under an agreement that he shall have the same lien, is entitled in equity to be subrogated to the lien of the creditor whose debt is paid. The court said:

This matter is before the court on the petition of the trustee for the review of the decision of the referee with reference to the claim of G. A. Cassell.

The facts in the case are as follows: McGuire, the bankrupt, in October, 1902, purchased a farm for $3,500, giving in payment $500 in cash, and six notes for $500 each, the first payable April 1, 1904, and the others annually thereafter, the notes being secured by mortgage on the farm. The mortgagee transferred the first three notes. When the first note became due, Cassell, at the request of the mortgagor, and upon the mortgagor's promise to turn over to him this first note, advanced to the mortgagor the money with which to pay the note, which

Digitized by Google

was taken up by McGuire and given to Cassell. There seems to have been some argument between McGuire and Cassell on the one hand, and the agent of the holder of the note on the other, at the time of the negotiations for payment of the note. The latter refusing to assign the note, and stating that he would mark it "paid," but at the time of the payment no such indorsement was made.

Cassell claims that he is entitled to be subrogated to the rights of the original payee of the note under the mortgage executed by McGuire to secure it, and this claim is disputed by the trustee. The contention of the claimant was sustained by the referee.

The doctrine of subrogation will be applied, in general, wherever any person, other than a mere volunteer, pays a debt or demand which, in equity and good conscience, should have been satisfied by another. Was Cassell, in the dealings above cited, a mere volunteer? In the case of Home Sav. Bank v. Bierstadt, 168 Ill. 618, 48 N. E. 161, 61 Am. St. Rep. 146, the court says:

"Subrogation, as a principle of equity jurisprudence, is generally confined to the relation of principal and surety and guarantors, or to a case where a person is compelled to remove a superior title to that held by him in order to protect his own, and also to cases of insurers. . . . Whilst these general heads include the doctrine and principles of subrogation, that doctrine has been steadily expanding and growing in importance and extent in its application to various subjects and classes of persons. This equitable principle is enforced solely for the accomplishment of substantial justice, where one has an equity to invoke which can not injure an innocent person.

The right of subrogation which springs from the mere fact of the payment of a debt, and which is included under the heads first above stated, is what is termed legal subrogation, and exists only where included within those classes. But, in addition to this principle of legal subrogation, there exists another principle, which is termed conventional subrogation, which results from an equitable right springing from an express agreement with the debtor, by which one advances money to pay a claim for the security of which there exists a lien, by which agreement he is to have an equal lien to that paid off, whereupon he is entitled to the benefit of the security which he has satisfied with the expectation of receiving an equal lien. . . . It is the agreement that the security shall be kept alive for the benefit of the person making the payment which gives the right of subrogation, because it takes away the character of a mere volunteer."

In the case of Wilkins v. Gibson, 113 Ga. 31, the court says, on page 43, 38 S. E. 374, 379, 84 Am. St. Rep. 204:

"In a case where a stranger pays off the debt of another which is secured by deed or mortgage the parties have a right to agree that the payor will have the same priority as the holder of the security, and be substituted for him. A court of equity will enforce this agreement as made, and give the second creditor just such security as he contracts for."

The Circuit Court of Appeals for the Fifth Circuit, in the case of Rachal et al. v. Smith et al., 101 Fed. 159, 164, 42 C. C. A. 297, 302, says:

"Since the equitable doctrine of subrogation was ingrafted on the English equity jurisprudence from the civil law it has been steadily growing in importance, and widening in its sphere of application. It is a creation of equity, and is administered in the furtherance of justice. It is applied to give the party who actually pays the debt the full benefit and advantage of such payment. It has been long settled, and it is not controverted, that the doctrine applies where a junior incumbrancer discharges the prior incumbrance, and where the surety pays the debt of his principal, and in cases of like character.

"A just limitation of the application of the doctrine is that it does not apply to payments made by a mere volunteer or stranger. 'No one can be allowed to intrude himself upon another as his surety, and, therefore, if a man voluntarily pays the debt of another, without any agreement to that effect with the debtor, he can not take the place of the creditor, or in any way recover the money so paid of the debtor, because the law does not permit one man thus officiously and without solicitation to intermeddle with the affairs of another.' Winder v. Diffenderfer, 2 Bland, 199; Harris, Subr. p. 558, sec. 810, note 'h.' This objection is made in the present case. It is urged that Francis Smith, in advancing the money to pay the mortgages, was a mere volunteer within the meaning of the authorities, and that the doctrine of subrogation, therefore, does not apply. It will be remembered that the money was lent and applied to the payment of the mortgages at the request of the debtor, the new mortgage being taken on the same lands covered by the older mortgages."

. . . . . .

Pomeroy, in his work on Equity Jurisprudence (1883, section 1212), after stating the general rule as to subrogation or equitable assignment in cases of payments made by persons who have subsequent interest in the premises, adds:

"The doctrine is also justly extended by analogy to one who, having no previous interest and being under no obligation, pays off the mortgage, or advances money for its payment, at the instance of a debtor party and for his benefit. Such a person is in no true sense a mere stranger and volunteer."

In the case of Straman v. Rechtine et al., 58 Ohio St. 443, 455, 51 N. E. 44, 46, the Supreme Court of Ohio says:

"Where money is loaned under an agreement to be used in the payment of a lien on real estate, and it is so used, and the agreement is that the one who loans the money shall have a first mortgage lien on the same land to secure his money, and through some defect in the new mortgage, or oversight as to other liens, the money can not be made on the last mortgage, the mortgagee has a right to be subrogated to the lien which the money supplied by him has paid, when it can be done without placing greater burdens upon the intervening lienholders than they would have borne if the old mortgage had not been released."

I am of the opinion that the facts in the case

Digitized by Google

under consideration clearly entitle Cassell to the relief claimed, and the decision of the referee is therefore affirmed.

Marriage Brokerage Contract.

The Supreme Court of Iowa holds a "marriage brokerage contract" to be invalid in the case of In re Grobe's Estate, 102 Northwestern Reporter, 804. The deceased agreed to pay complainant a certain amount if she would go to Chicago and see a woman whom deceased was desirous of marrying, and give her information concerning him. It did not appear whether deceased already had a contract of marriage with the woman or not, and in this respect the case differs somewhat from the ordinary marriage brokerage case. But the court holds that the rule that it is contrary to public policy to allow a recovery for services rendered in procuring a marriage, is as applicable to advice or solicitation with reference to carrying out a marriage contract as it is with reference to the formation of such a contract.

Humor of the Law.

Leonard Swett, the great Chicago lawyer, once agreed to charge a retainer of $100 per day in a criminal case wherein he was successful, and the trial lasted four days, but Swett forwarded a bill for $700. The satisfied client promptly sent in his check for the amount, although he could not quite understand the size of the bill. Some few days later, lawyer and client met casually, and the client quizzed the lawyer about the size of his bill. "You worked four days at $100 per day which makes $400, and yet your bill called for $700. How do you explain that?" quizzed the client. Swett readily explained that it was "a right," for he had accepted congratulations on his big victory for three full days, which was a part of the "refresher." The client was satisfied with Swett's explanations, thinking that the ways of lawyers like Swett are peculiar and past finding out.

Another story involving a serious example of absence of mind is told of a lawyer, who, on leaving his office to execute some business in another town, posted this card on his door: "Out of town, will be back tomorrow." On his return to his office on the morrow, he saw the above mentioned card and sat down on the last step of the stairs. A client coming up the stairs to see him, found the lawyer sitting as stated. Upon asking why he sat there, he, of the absent mind, pointed to the card and said: "He was waiting for his return."

Another judge has ruled that a wife has the right to pick her husband's pockets. Judge Slover declaring in the circuit court today that he would never interfere with that ancient and honorable right of a wife to search for loose change. W. M. Harding asked for a divorce from Ina M. Harding for several reasons, one of which was his wife had a habit of searching his pockets after he fell asleep. When the evidence was all in Judge Slover said:

"I want it distinctly understood that I am not granting this divorce because the wife went into her husband's pockets. I shall do nothing to interfere with that ancient privilege of the fair sex. A wife has the right to do that. I grant the divorce for other reasons."

The failure to perform an oral promise made by the sole heir at law of one desiring to dispose of her estate by will to third persons, that he will dispose of her estate as she desires, is held, in Cassels v. Finn (Ga.), 68 L. R. A. 80, not to make the heir at law of the promisor, in case of intestacy, a trustee ex maleficio as to the property inherited by him, in the absence of actual fraud.

Placing a car of lumber upon the team track, to be conveniently unloaded by the consignee, is held, in Southern R. Co. v. Lockwood Mfg. Co. (Ala.), 68 L. R. A. 227, not to be such an absolute delivery of the property into his possession as to cut off the carrier's lien for subsequent demurrage charges accruing while the lumber remains upon its car.

That the cause is ended is held, in Burdett v. Com. (Va.), 68 L. R. A. 251, not to prevent the punishment of a party for contempt in publishing an article charging the judge with misconduct during its trial, which consists in scandalizing and defaming the court itself. A note to this case reviews the other authorities on question of statements with respect to ended causes as contempt of court.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John Hay**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of August, 1905. J. W. WADSWORTH, JR., Mt. Morris, N. Y.; PAYNE WHITNEY, 51 Wall st., New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,136. Administration. 35-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

A. Leftwich Sinclair, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Johanna Engel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1905. NORMAN T. ENGEL, 590 Center Market. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,096. Administration. 35-3t

Lester & Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James Coleman, sometimes known as James Colemon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **28th day of August, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of August, 1905. E. L. SCHMIDT, HARRY M. PACKARD, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,118. Administration. 35-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caleb C. Willard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of August, 1905. KATE WILLARD BOYD, 1315 P st. N. W.; HENRY K. WILLARD, Kellogg Building; GEORGE E. HOWE, care of Henry K. Willard, Kellogg Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,101. Administration. 35-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Philo J. Lockwood**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. 35-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louis Kurtz, Senior**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1905. ROBERT H. T. LEIPOLD, 1300 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,112. Administration. 35-3t

Legal Notices.

W. E. Harvey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel A. Connolly, Deceased.
No. 1179. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonus non on said estate, by William B. King, it is ordered this 29th day of August, A. D. 1905, that notice be and hereby is given to unknown next of kin and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

SECOND INSERTION.

Robt. E. Mattingly, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Margaret C. Mooney, Deceased.
No. 13,127. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Bettie Le Preux, it is ordered this 23d day of August, A. D. 1905, that notice be and hereby is given to **Mrs. Patrick Mooney, Mary Garbe, William Garbe, William Purcell, Florence Nicolls, Gertrude Mooney, Francis Mooney, and Walter Mooney**, and to all others concerned, to appear in said court on **Monday, the 25th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 34-3t

H. Winship Wheatley, Attorney

In Justice's Court of the District of Columbia,
Sub-District, No 2.
Northwest Eckington Improvement Company, a Corporation, v. Jane Arnold. At Law, No. —.

ORDER OF PUBLICATION.

The object of this suit is to secure a judgment of condemnation of certain credits of the defendant amounting to one hundred and seventy-five 82-100 (175.82) dollars in the hands of a third party. It is, therefore this 19th day of August, A. D. 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order to defend this suit, and to show cause why the plaintiff should not have judgment as set forth above. Provided a copy of this order be published at least once a week for three (3) successive weeks in The Washington Law Reporter. SAML. C. MILLS, Justice of the Peace, 1205 G street N. W. 34-3t

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary C. Griffith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **18th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of August, 1905. JOHN R. KING, 615 15th st. N. W.; LINNIE BELL BATES, 1104 L st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,115. Admn. 34-3t

Justice blanks of every description for sale at this office.

Digitized by Google

Legal Notices

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Lavinia A. Hall**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of September, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of August, 1905. L. CABELL WILLIAMSON. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,904. Administration. 34-3t

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Helen C. Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1905. ALLAN R. CAMPBELL, 25 Broad st., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,866. Administration. 34-3t

Julius I. Peyser, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Fannie Luchs**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of August, 1905. JOSEPH LUCHS, 823 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,117. Administration. 34-3t

THIRD INSERTION.

Wilson & Barksdale, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John Hamerstrom**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1905. EMILY E. HAMERSTROM, 1338 N. Capitol st. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,094. Administration. 33-3t

W. Gwynn Gardiner, Solicitor
In the Supreme Court of the District of Columbia.
Alfred A. Ames, Complainant, v. Hattie E. Ames et al., Defendants. Equity. No. 25,524.

The object of this suit is to obtain a divorce on the grounds of adultery. On motion of the complainant, it is this 15th day of August, A. D. 1905, ordered that the defendant, **Martin Glynn**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. JOB BARNARD, Justice. True copy: J. R. Young, Clerk, by L. P. Williams, Asst. Clerk. 33-3t

Legal Notices.

S. D. Luckett, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Colorado, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Emily B. Muncey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **16th day of February, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 16th day of August, 1905. ELIZA BOOTH, CATHARINE R. BOOTH, Admxs., 622 and 624 F st. N. W., City. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,296. Administration. 33-3t

Wm. M. Lewin, Attorney
In the Supreme Court of the District of Columbia,
Holding the Probate Court.
In re Estate of M. Annie Van Mater, Deceased.
No. 12,398.

J. Bell Austin, executor of the last will and testament of M. Annie Van Mater, the above named decedent, having reported to the court the sale of the real estate known as lot numbered fifty-six (56) of a subdivision of the south grounds of Columbian College, and otherwise known as house and premises No. 1451 Stoughton street N. W., in said District of Columbia, of which real estate said decedent was seized and possessed at the time of her death, unto Carolyn G. Caughey, for the sum of seventy-two hundred and twenty-five dollars ($7,225), subject to existing lease, and to a mortgage for $4,000, with accrued interest, the same to be deducted from the purchase price, the balance to be paid in cash; it is this 14th day of August, 1905, ordered that said sale be ratified aud confirmed, unless cause to the contrary thereof be shown to this court on or before the **14th day of September, 1905**; provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned day. It is further ordered that said executor be and he is hereby authorized and directed to pay to the real estate agent finding said purchaser three (3) per centum on the amount of said sale, as a commission therefor. By the Court: JOB BARNARD, Justice. A true copy. Test: M. J. Griffith, Deputy Register of Wills. 33-3t

Jas. A. Cobb, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Walter B. Hayson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of August, 1905. ABRAHAM HAYSON, Kenilworth, D. C. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,100. Administration. 33-3t

Wolf & Rosenberg, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Charles Henry Blumer**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of September, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 15th day of August, 1905. MAURICE D. ROSENBERG, Admr., by Wolf & Rosenberg, Attorneys. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,392. Administration. 33-3t

Justice blanks of every description for sale at this office.

Digitized by Google

Legal Notices.

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Eleanor M. Johnston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of August, 1905. JOHN VAN RENSSELAER, 2 Thomas Circle, city. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,102. Administration. 33-3t

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sophia Sautter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of June, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of August, 1905. THE WASHINGTON LOAN & TRUST CO., by Harry G. Meem, Asst. Treasurer. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,872. Administration. 33-2t

G. P. McGlue, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Daniel M. Ryan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of August, 1905. JAMES RYAN, 2911 13th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,922. Administration. 33-3t

Edward S. Duvall, Jr., Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Gustave Gunderson**, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1905. EMMA R. TALBERT, 714 11th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,073. Administration. 33-3t

Brandenburg & Brandenburg, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Jane Roane**, deceased has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 4th day of September, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of August, 1905. F. WALTER BRANDENBURG. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,351. Administration. 33-3t

Legal Notices.

L. E. Phillips, Solicitor
In the Supreme Court of the District of Columbia,
Holding a Term for Equity Business.

Edward R. Taylor, Complainant, v. Julia Eva Taylor, Defendant; Julia Eva Taylor, Complainant in Cross Bill, v. Edward R. Taylor, Defendant in Cross Bill, and Mamie Downs, Defendant and Co-Respondent. Equity No. 22,820.

The object of this suit is to obtain a divorce a vinculo from the defendant, Edward R. Taylor, upon the ground of the defendant's adultery with the defendant and co-respondent, Mamie Downs. On motion of the complainant in cross bill, Julia Eva Taylor, it is this 2d day of August, 1905, ordered that the defendant in cross bill, **Edward R. Taylor**, and the defendant and co-respondent in said cross bill, **Mamie Downs**, and each of them, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington Times. JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 33-3t

Maurice Kelly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Anna Martin Rochester, Deceased.
No. 13,108. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William Beatty Rochester, it is ordered this 17th day of August, A. D. 1905, that notice be and hereby is given to **Annie Townsend Rochester**, and to all others concerned, to appear in said court on **Monday, the 18th day of September, A. D. 1905, at 10 o'clock, A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 33-3t

L. E. Phillips, Solicitor
In the Supreme Court of the District of Columbia,
Holding a Term for Equity Business.

Katie L. Forrester, Complainant, v. Abram M. Forrester, Defendant. No. 25,412. Docket 56.

ORDER FOR APPEARANCE OF ABSENT DEFENDANT.

The object of this suit is to obtain a divorce a mensa et thoro from the defendant Abram M. Forrester, on the ground of the defendant's desertion of the complainant herein. On motion of the complainant, it is, this 19th day of July, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington Times. WRIGHT, Justice. True copy. Test: J. R. Young, Clerk, by Harvey Given, Asst. Clerk. 33-3t

Wolf & Rosenberg, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Charles Milton Floyd**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of September, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of August, 1905. BERTHA F. IRWIN, Executrix, by Wolf & Rosenberg, Attorneys. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,328. Admn. 33-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 • (WEEKLY) No 36

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - SEPTEMBER 8, 1905

CONTENTS.

Editorial 561
The Bankrupt Law 562
SUPREME COURT OF THE DISTRICT OF COLUMBIA:
Frederick Mertens et al., complainants, v. George Henry Proctor et al 565
COURT OF APPEALS OF MARYLAND:
Ward P. Littig, executor, etc., v. Vestry of Mt. Cavalry P. E. Church, etc 567
Miscellany 568
Legal Notices 574

Apartment House—Liability of Owner for Injury to Child of Tenant.

In Widing v. Penn Mutual Life Insurance Company, decided recently by the Supreme Court of Minnesota (104 N. W. 238), it appeared that the owner of a city apartment house rented flats therein to tenants for housekeeping purposes. For several years the children of the occupants had been allowed to play on the porches without reference to the relative occupancy of the adjacent apartments by their parents. Around these porches was a rail balustrade which had become defective, and had been repaired by the janitor in charge of the building. Two weeks afterwards it again broke, and was repaired by the tenant of the adjacent flat. A child 6½ years old, the daughter of one of the tenants, while on a visit to the flat having the defective porch, in playing with a companion ran against the same, and was precipitated to the ground and injured. It was held, upon these facts, first, that the injured child was not a trespasser or in a legal sense a mere licensee; and, second, that it was the duty of the owner of the building to exercise ordinary care to maintain railings around the porches where the children were permitted to play in a reasonably safe condition for use. The court said in part:

The theory of the learned trial court in dismissing the action was that plaintiff's child was trespassing upon the porch, or, at best, a mere licensee, and, conceding that she might have a right to be on the porch where her mother had stored her own articles, she did not have that same privilege on one of the porches of another tenant, but was required to take such premises at her own risk, or as she found them. It is a well settled principle of law which must be adhered to that trespassers are in duty bound to take the premises upon which they go as they are, and that the owner of the same is not in duty bound to go beyond the obligations which arise from actual or implied duties to provide a reasonably safe place for intruders or licensees. We have been cited to several cases which are supposed to be relevant to the questions here involved, but the peculiar situation that existed, in our judgment, must control and affect the liability based upon the particular facts before us, and no cited case is directly applicable. These apartments were occupied by tenants for domestic purposes. The defendant landlord, who rented and received compensation for their use, was in duty bound to contemplate all ordinary and reasonable purposes for which they might be used; and if, within such limitations, it was intended to restrict the occupancy of the porches by the tenants and their children, it was just and reasonable that such restrictions should be definitely made and brought home to such persons.

A number of families living in apartments like these would be reasonably expected to have children of tender years, and it would be difficult to prevent them from using the halls, though it might be done, as in this case, by regulation. It was also but reasonable to suppose that they would go upon the porches, and the fact that they had done so for a number of years without objection from the owner while the building was under the control of defendant's janitor, in connection with the natural and ordinary characteristics of children, has a tendency to establish an implied invitation to use the porches in this way. Defendant had knowledge not only of the fact of the use of the porches by the children of the building, but that the balustrade which was the direct cause of the injury was out of repair. The janitor in fact repaired it a sufficient length of time before the accident to put him upon inquiry that it was defective. The fact that it again got out of repair very soon would have a tendency, under such circumstances, to show that it was defective, and had not been properly repaired; and in permitting the balustrade to remain in a defective condition must be regarded as little less than a trap or hidden source of danger.

Under the evidence in this case, considering the use that was made of the building by the tenants, the natural relations that arise from such use, the habits of the children, their tendency, which can not be excluded from our inquiry, it seems very clear that it would be a question of fact for the jury to determine whether the defendant exercised proper care in maintaining the railing in a reasonably safe condition.

We may say with reference to testimony that was offered to show that there were no playgrounds in connection with the building that, while it was not the duty of the defendant to furnish a playground for the children, the natural tendency and inclination of the children, their habits, in connection with the permission it gave to use the porches, would require its surroundings and conditions to be shown, and that for this purpose it was error to exclude this evidence.

Digitized by Google

THE BANKRUPT LAW.

REPORT OF COMMITTEE ON COMMERCIAL LAW OF THE AMERICAN BAR ASSOCIATION.

At the annual meeting of the American Bar Association, held last week at Narragansett Pier, Rhode Island, the Committee on Commercial Law strongly disapproved of the bill pending in Congress to repeal the present bankrupt law, and states that while the "law is by no means perfect or incapable of improvement by amendment," the members of the committee regard it "as drawn upon correct lines and capable of perfection without drastic amendment." The report of the committee was signed by Messrs. Walter S. Logan, George Whitelock, and F. N. Judson, and is as follows:

To the American Bar Association:

Your Committee on Commercial Law respectfully report:

At the meeting of the association in 1897, a paper by Mr. Walter S. Logan, a member of the committee, entitled "A Broader Basis of Credit," was referred to this committee with instructions to report what, if, in their opinion, any legislation was necessary to carry out the suggestions contained in the paper, and to report such bill or bills as, in the judgment of the committee, should be deemed advisable to carry out such suggestions.

Before the meeting at which the committee was to report on this subject, the bankrupt law, approved July 1, 1898, was passed and went into effect. This law provided to a considerable extent a remedy for many of the evils pointed out in the paper referred to, but in the judgment of the committee and of this association was far from being perfect as a piece of legislation.

In the years 1898, 1899, 1900, 1901, 1902, 1903, the committee made reports upon the bankrupt law and upon proposed amendments to it. All of these reports were approved—generally unanimously—by the association.

In the year 1899 the committee, after discussing the subject, summed up its conclusions as follows:

"Your committee on commercial law are of the opinion:

"1. That a bankrupt law is wise and beneficent legislation.

"2. That the general features of the present bankrupt law should have the approval and support of the bar and the commercial community.

"3. That whatever amendments are made to the provisions of the law relating to voluntary bankruptcy should be in line of a better protection to the creditor against fraud in the bankruptcy proceedings.

"4. That the amendments to the provisions of the law relating to involuntary bankruptcy should be along the lines of a better remedy for the creditor for fraud, actual or contemplated, on the part of the debtor previous to the institution of bankruptcy proceedings.

"5. That the ideal bankrupt law is one that—

"(*a*) Allows every honest debtor to procure a speedy discharge from his obligations upon the surrender of all his property.

"(*b*) Gives every creditor a complete remedy against actual or contemplated fraud on the part of the debtor.

"(*c*) Punishes all fraud on the part of debtor or creditor with relentless severity."

At the conclusion of the reading of this report it was moved by Mr. Robert D. Benedict, of New York, and seconded by Mr. Everett P. Wheeler, of New York, that the report be approved and adopted, and, further, that the committee be instructed to continue its study and investigation of the practical working of the Bankrupt Law, and to report further thereon at the next meeting of the association, with any amendments they may deem necessary for the perfection of the statute. This motion, after considerable discussion, was unanimously adopted.

At the meeting of the association in 1900 a report was made by the committee covering 14 full pages in the association's report, in which the amendments then pending before Congress, in what is known as the Ray Bill, were discussed at length and approved and other recommendations made in relation to the amendment of the law. The report was fully discussed at the meeting of the association, the discussion occupying the greater part of one entire session. Hon. E. C. Brandenburg, Assistant United States Attorney-General, having charge of bankruptcy proceedings, was present and was invited to participate in the discussion, and did so. After a comparatively unimportant amendment, the report was unanimously adopted.

In the report of the committee for the year 1901 the Ray Bill was further discussed and its passage advocated, and at the conclusion of its reading the following resolutions were unanimously adopted:

"Resolved, That the report of the committee be accepted and approved, and

"Further resolved, That the Committee on Commercial Law for the ensuing year be authorized and instructed to continue the line of work of its predecessors, looking to the perfecting of the Bankrupt Law."

In the winter of 1901 and 1902 the Ray Bill passed the House of Representatives by an overwhelming majority, but was not acted upon by the Senate. In the report of your committee for 1902 the proposed amendments were still further discussed at considerable length and its conclusions unanimously approved and adopted, and the committee was again authorized and directed to advocate and urge proper legislation by Congress on the lines recommended by the report.

On February 5, 1903, the bill which had been so long and so earnestly advocated by the committee and supported by the association, after having been passed by both Houses of Congress, received the signature of the President and became a law. In the discussion of the subject before the committees of congress your Commercial Law Committee took a leading part, and its chairman was present in the rooms of the Senate Judiciary Committee at the request of the chairman of that committee when the bill was finally reported and put upon its passage in the Senate.

The bill as amended was not by any means all that your Committee on Commercial Law desired, but it was so great an improvement on

Digitized by Google

any previous bankruptcy legislation, and embodies so much that your committee had long recommended, that your committee considered its passage a great triumph for the association. In the work of securing the passage of these amendments your committee co-operated with commercial bodies throughout the nation, and the adoption of the Ray Bill seemed to give general satisfaction to the legal and to the commercial community.

In the report of the committee for 1903 your committee again took strong ground in support of the bankrupt law, and, although their conclusions upon subjects other than the bankrupt law met with somewhat determined opposition in the association, their conclusions upon the bankruptcy question were accepted without question.

It thus appears that for seven consecutive years the Committee on Commercial Law have reported in favor of substantially the bankruptcy legislation which now appears upon the statute books of the United States, and that the association has at all times, with practical unanimity, sustained the committee in their work and adopted their conclusions.

If there is anything that the American Bar Association would seem committed to as a part of the permanent jurisprudence of the United States, it is a bankrupt law embodying the essential features of the present law. The lines upon which the battle for the bankrupt law has been fought are those laid down by the American Bar Association, and the existence of the present law is due in very large measure to its continued approval by this association and the constant contest which it has made in behalf thereof.

A bill is now pending before Congress which proposes to repeal this very bankrupt law. Your committee look upon this policy with the utmost disfavor. They believe that the bankrupt law, brought to its present improved state largely through the influence of this association, should be and remain a part of the legal polity of the nation. It should be perfected in all respects in which further improvement is possible. It should be made as far as possible a relief for the honest debtor, a protection for the honest creditor, and a means of punishment of all fraud in connection with bankruptcy.

If there are faults in the legislation they should be remedied by amendment. They should be eliminated by perfecting the existing law. If at any place or at any time this law is found to work injustice, its administration should be improved; but the body of the law should remain. To repeal the present law, only to reenact another at some future time, full of the crudities of new legislation, seems the height of legislative folly. If the law remains, modified only when necessary to make its provisions more logical and its administration more accurate, the business community and the legal profession will readily accommodate themselves to the changes as they have already accommodated themselves to the body of the enactment. If, on the other hand, a bankrupt law is to survive its enactment for a few brief years only, and no national system is to exist for an ensuing period until a new scheme of Federal policy is adopted, as has been the past history of bankruptcy legislation in this country, the path of the business man is made harder both by the enactment of the law and by its repeal, and the course of justice runs not on an even keel, but interruptedly, intermittently, and unsatisfactorily.

The present law has its enemies. One of its unpopular features in certain quarters is that which prevents preferences and compels all creditors of a bankrupt to share ratably in the division of his estate, a feature which your committee highly commend. Many creditors think that in the race and scramble for a preference they are in a position to fare better than their less fortunate or less favorably situated neighbors. But, however much they might profit by possible preferences, the business community and the general public suffer, and the policy is mischievous.

Your committee can not conceive that the people of the United States would ever be willing to go back permanently to the methods prevailing at times when there was no national bankrupt law. The only fair and equitable method for the division of an insolvent's estate is the method prescribed by the law. No State statute could take its place, for in these days of world-wide commercial relations no one State can have the requisite jurisdiction.

It would, in the judgment of your committee, be a reactionary and retrogressive movement to deprive the community of this enactment, which allows an honest but unfortunate debtor to start life anew on the condition of surrendering his whole property to his creditors, and which permits creditors, by taking the initiative, to rescue the salvage of an otherwise hopeless wreck, and to pursue this course without engaging in an unseemly scramble for preferences as among themselves.

"Your committee, therefore, recommend that the American Bar Association adhere to the strong stand taken in years past in support of a Bankrupt Law as a part of the permanent jurisprudence of the United States, and in support of the present law as being on the whole the best law heretofore enacted.

Your committee specifically recommend the adoption of the following resolutions:

"Resolved, 1. That the American Bar Association approves now, as it has heretofore frequently approved, a Bankrupt Law as a permanent part of the jurisprudence of the United States.

"2. That the association regards the present law as by no means perfect or incapable of improvement by amendment, but as drawn upon correct lines and capable of perfection without drastic amendment.

"3. That the association disapproves of the bill now pending for the repeal of this law, and earnestly asks Congress not to pass it.

"4. That the Committee on Commercial Law be and they are authorized and requested to oppose the passage of the act before the proper congressional committees and its signature by the President, if passed.

"5. That the members of the association, in sympathy with the conclusions expressed by the committee, be and they are requested to communicate with their Senators and Representatives in Congress to that effect.

Digitized by Google

"6. That the secretary of the association be, and he is hereby directed, to send a copy of these resolutions to each member of the association as soon after this meeting as practicable without waiting for the publication of the annual report.

Insurance Policy—Conditions—Construction of "Loss Payable" Indorsement—Stipulation Against Chattel Mortgage.

In Atlas Reduction Co. v. New Zealand Life Insurance Co., decided by the United States Circuit Court of Appeals for the Eighth Circuit (138 Fed. 497), the following points were decided:

1. A policy of insurance is a contract by the terms of which must be measured the right of the insured and the obligation of the insurer.

2. Stipulations in written policies of insurance intended to preserve the policy from change or alteration by parol, and to make it and such indorsements thereon or additions thereto as may be made in writing a complete repository and memorial of the entire agreement, are valid and for the benefit of both parties and of the community at large; and to give effect to the purpose of such a stipulation, so far as it can reasonably be done, especial care should be taken to find in the policy and in any indorsements thereon or additions thereto the means of its or their proper interpretation, without resort to parol evidence.

3. An indorsement was made upon a policy of fire insurance, by the agents of the insurer, at the request of the insured, as follows: "Subject to all the conditions of this policy, loss, if any, payable to D. & S. as their interest may appear." Held: (a) The indorsement must be read in the light of the purpose which actuated the parties in stipulating that the policy could be modified, or any provision thereof waived, only by a writing of equal dignity and credit with the policy itself. (b) Such an indorsement is a common mode of furnishing a species of security by a debtor to his creditor, who may be willing to trust to the debtor's honesty, skill, and success in trade, but who requires some indemnity against such accidents as loss by fire; and it does not create a new contract of insurance with the payee, or abrogate or waive any condition of the policy. (c) The terms of the indorsement are not conflicting, but consistent and plain, and their purpose and effect are to make D. & S. the simple appointees of the insured to receive payment of any loss payable to the insured under the policy, and to receive it, not absolutely, but to the extent of any interest they may have in such payment at the time of the loss, consistently with the due observance by the insured of all the conditions of the policy. (d) The words "as their interest may appear" are plainly prospective, and refer to an interest, not in the property insured, but in the payment of the loss. They are words of restriction, without which the whole loss would be payable absolutely to D. & S., without any showing of an interest in its payment or of the extent of that interest. (e) The indorsement does not give consent to the incumbering of the insured personal property by a chattel mortgage (1) because it does not mention a chattel mortgage, or describe D. & S. as chattel mortgagees, or show that the attention of the parties was directed to a chattel mortgage; (2) because it was not necessary that there should be a chattel mortgage to enable the insured to make a valid appointment of D. & S. to receive payment of the loss, if any, or to give them an interest in the payment of the loss; and (3) because the words "subject to all the conditions of this policy" show that the conditions were not intended to be abrogated or waived, but to have effect and be respected as if the indorsement had not been made, and among the conditions of the policy are these: "This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void . . . if the subject of insurance be personal property and be or become incumbered by a chattel mortgage, . . . and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy, . . . unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured, unless so written or attached." (f) There being no claim of fraud or mutual mistake, it is not permissible to show by oral testimony that at the time of making the indorsement the agents knew that the insured personal property was incumbered by a chattel mortgage and intended by the indorsement to consent thereto on behalf of the insurer, because what the agents may have known, and even what they may have said, is of no importance, as under the stipulations of the policy they were powerless to waive any provision or condition, or to affect the rights of the parties, except by a writing indorsed upon or added to the policy, and whatever was not so indorsed upon the policy or added to it was the same as if not done, because it was not authorized.

4. Where a policy of fire insurance covering personal property contains a stipulation entirely avoiding the policy, if such property be or become incumbered by a chattel mortgage, without consent thereto being indorsed upon or added to the policy, the giving of a chattel mortgage upon such property by the insured during the term of the policy, without the consent of the insurer indorsed upon or added to the policy, terminates the insurance and prevents a recovery under the policy by the insured or his appointee for a subsequent loss by fire.

Hook, circuit judge, dissenting.

A forfeiture of insurance for failure to keep and produce books is held, in American Cent. Ins. Co. v. Nunn (Tex.), 68 L. R. A. 83, not to be waived by an examination of the insured under oath, with knowledge of loss, which puts him to some expense, where the policy expressly provides that the insured shall submit to examination under oath, and that the company shall not be held to have waived any forfeiture under the policy by an examination so provided for.

Digitized by Google

Supreme Court of the District of Columbia.

FREDERICK MERTENS ET AL., COMPLAINANTS,

v.

GEORGE HENRY PROCTOR ET AL.

EQUITY PRACTICE; RIGHT OF COMPLAINANT TO DISMISS SUIT.

1. A complainant has the right to enter a dismissal of his bill at almost any stage of the proceedings before a final decree, unless defendant would be prejudiced thereby; and it is not considered that the defendant is prejudiced by a dismissal merely because he is liable to be sued over again.
2. Complainants sued to rescind an agreement whereby they had conveyed lands to defendants in consideration of stock in a corporation, and for a reconveyance of the lands, basing their claim to relief on the alleged fraud of the defendants, who, deeming themselves defrauded, had brought an action at law for damages against complainants. The defendants answered, denying the alleged fraud, alleging fraud on the part of the complainants, and consenting to a rescission of the agreement. Defendants also filed a motion for a decree in accordance with the prayers of the bill. Thereafter, while said motion was pending, complainants entered a dismissal of the bill, and defendants moved to strike off said dismissal. *Held*, that complainants had a right to dismiss the suit, and the motion denied.

In Equity. No. 25,519. Decided August 31, 1905.

HEARING on a motion by defendants to strike off the dismissal of a bill entered by complainants in the clerk's office. Denied.

Messrs. Birney & Woodard for the complainants.

Mr. A. S. Worthington and *Mr. Charles L. Frailey* for the defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

This case has been heard upon a motion of the defendants to strike off the dismissal of the bill of complaint which the complainants caused to be entered in the clerk's office. At the time when the complainants caused such entry of dismissal to be made the defendants had answered and had also filed a motion for a decree, and it is contended by them that the cause was in such a posture that they were entitled to a decree upon their own motion and that the complainants had no right to have their bill dismissed.

Very briefly stated, the bill sought a reconveyance to the complainants of lands which had been conveyed to one of the defendants in consideration of stock in a corporation transferred to the complainants by one of the defendants who had bought it from the other defendant. The basis of the complaint was that the complainants had been deceived and defrauded in respect to the value of the stock, and it required an answer under oath from the defendants in regard to the relations between them, as well as in regard to the main allegations of the bill. On the other hand, the defendants had considered themselves defrauded in the transaction by reason of alleged false representations in regard to the land, and had brought an action at law to recover their damages. In other words, both parties desired a rescission of the contract and restitution. The defendants answered accordingly.

The bill prayed not only for a reconveyance to the complainants of the land which they had parted with, but also that upon such reconveyance being made to them they might be decreed to deliver to the defendants, or one of them, the stock which the complainants had received for the land, and that the agreements between the parties might be delivered up and canceled. This relief the defendants in their answer consented to, and moved that the decree be entered in accordance with the prayers of the bill, giving notice of the time when they would call up said motion for action by the court.

The bill and the answer, it is said, had put the parties in such a situation that nothing was left for the court to do except to enter a decree. This decree was one which would afford the defendants positive relief by restoring them to the possession and ownership of the stock which they claimed to have been deprived of by the fraud of the complainants. To obtain such relief the defendants would be obliged to bring an action of their own, in case the complainants should be allowed to dismiss the bill. The complainants had invoked the aid of the court to obtain certain specific relief, which involved the restoration of property to the defendants. The defendants also desiring the restoration of that property, solemnly consented to the decree which the complainants had prayed for, moved that the decree be entered, and notified the complainants of the time when their motion would be heard. Immediately upon receiving a copy of the answer and this notice the complainants had the entry of dismissal made.

It is admitted by the complainants that if the defendants had filed a cross-bill, seeking the same relief which they sought by their motion, the complainants would have had no right to enter their bill dismissed. This might seem to put the case on a question of form rather than of substance. It is said the defendants were entitled to have the decree entered, and moved to have that action taken, that it was unnecessary to file a cross-bill because they desired exactly the same relief that the complainants offered and prayed for; that both parties having solemnly furnished the court the basis for a final decree between them, and one party having moved for the decree and notified his adversary, it would be trifling with the court to permit the complainants to withdraw; that the case differs entirely from those cases in which the answer is one of defense merely, and in which the decree will merely entitle the defendant to his costs, because in this case the decree will afford the defendants positive relief, and it is said they have taken every step incumbent upon them to entitle them thereto.

But let us take another view of the case.

Upon the facts stated in the complainant's bill the complainants were entitled to have their land again upon restoring to the defendants the shares of stock. Upon the facts stated in the answer the defendants were entitled to have their stock again upon reconveying to the complainants the land. The complainants' right to rescind was based upon the alleged fraud of the defendants. The defendants' right to rescind was based upon the alleged fraud of the complainants. What each desired was a rescission. Upon the facts stated in the bill the

Digitized by Google

defendants were not entitled to any relief. They could not insist that the contract should be rescinded because of their own fault. Upon the facts stated in the answer the complainants were not entitled to any relief for a similar reason. The only basis for a decree was the common desire and prayer of the opposing parties. No facts were established upon the record which entitled either party to a decree. The complainants were not entitled to a decree because some of the essential facts which they alleged were positively denied by the defendants. The defendants were not entitled to relief upon the facts stated in their answer, even if they had been stated in the form of a cross-bill, until they had been established by proof or admission.

The court, therefore, having nothing as a basis for its decree, except the consent of both parties upon the record, why might not that consent be withdrawn by either side at any time before the decree was actually entered? If the defendants had put their allegations in the form of a cross-bill requiring an answer, they would have stood as a moving party, and the cause could not have been dismissed by the other party without their leave; but they chose to adopt the form of an answer, which means that they merely undertook to show why the complainants were not entitled to the relief they asked; and then after having shown that they were not entitled to the relief they asked, they said: "Nevertheless, we desire the same relief; therefore, we consent to it, and move the court to grant it." If the defendants had admitted the facts set forth in the complainants' bill, and then had moved the court for a decree, in accordance with the prayer of the bill, the court would have had a sufficient busis of fact upon which to render a decree; but would the defendants in that case have had a legal right to have the prayer of the bill granted when they had been guilty of a fraud upon the complainants, and it was that very fraud which was the basis of the decree? As the case now stands, the defendants have not even admitted the truth of the matters alleged by the complainants, but have alleged exactly contradictory matters by way of answer, and still claim that they are entitled to relief precisely as if they had established the truth of their own allegations.

The long and short of the matter is that there being no basis of fact established upon which a decree could be rendered, the decree could be based only upon the consent of the parties, which consent might be withdrawn at any time before the decree was entered.

The general rule is that a complainant has a right to enter a dismissal of his bill at almost any stage of the proceedings before a final decree unless the defendant would be prejudiced thereby, and it is not considered that the defendant is prejudiced by a dismissal merely because he is liable to be sued over again. In the present case it is not easy to see how he can be prejudiced because he has the same right and opportunity as before to establish the facts which would entitle him to the decree.

The proper province of a court is to find and establish the facts in controversy between litigants and then to render such a judgment upon those facts as the law requires. A court does not exist for the purpose of making bargains between parties. When the plaintiff alleges a state of facts which entitles him to relief, and the defendant answers by alleging a contrary state of facts which would entitle him to have the same judgment rendered which the plaintiff demands, there is no basis for a judgment of the court in such contradictory allegations upon the record, and if the common desire and prayer of the parties to have such a judgment rendered can be said to be a sufficient basis for a decree, it must certainly continue and exist at the very time when the judgment is rendered. The result is that the motion must be denied.

Pensioning Judges in England.

[From United States Consul Halstead, Birmingham, England.]

It is considered an essential condition of the English court system that the judges shall be absolutely independent financially, that their salaries shall be so large and provision for their future shall upon their retirement be so ample they need at no time of their service have any monetary anxiety.

The financial arrangements are explained quite fully in the following paragraphs from yesterday's issue of the Westminster Gazette, an evening paper published in London:

By the granting of an annuity of £3,500 ($17,032.75) a year to Sir Francis Jeune there are now no fewer than eight ex-judges in receipt of total pensions amounting to £28,000 ($121,662.50) a year. They are Sir Edward Fry, Lord Field, Sir Arthur Charles, Lord Brampton, Sir Ford North, Sir John C. Day, Sir Gainsford Bruce, and Sir Francis Jeune. Three other judges of the high court are also entitled to pensions as soon as they choose to take them. They are Justices Kekewich, Wills, and Grantham, and by the end of this month Mr. Justice Lawrance will become another.

A judge who continues on the bench after completing fifteen years' service really does his work for £1,500 ($7,299.75) a year, the difference between his salary and pension. In the court of appeal Lord Justice Mathew qualified for his pension nearly nine years ago, the master of the rolls becomes entitled to a pension of £4,200 ($21,899.25) a year, next year, while in the House of Lords Lord Macnaghten has been entitled to a pension for three years. The lord chancellor is entitled to a pension of £5,000 ($24,332.50) a year for life, however short his tenure of the chancellorship.

Getting shingle bolts to the mill, selling and shipping shingles therefrom, and placing some shingles in the dry kiln without turning on the steam, are held, in Brehm Lumber Co. v. Svea Ins. Co. (Wash.), 68 L. R. A. 109, not to be an operation of the mill when the machinery is stopped, so as to prevent the operation of a clause in an insurance policy making it void if the property is shut down or idle for more than thirty days without permission.

Digitized by Google

Court of Appeals of Maryland.

April Term, 1905.—Filed June 21, 1905.

WARD P. LITTIG, EXECUTOR, ETC., v. VESTRY OF MOUNT CALVARY PROTESTANT EPISCOPAL CHURCH, ETC.

SAVINGS BANK DEPOSIT—ENTRY—TRUST FUND.

A sum of money was deposited in a savings bank by a testatrix as follows: "Mt. Calvary Protestant Episcopal Church, subject to the order of Kate Littig, trustee, $500." Upon her death, her executor claimed the deposit as a part of her estate, but the lower court decreed that while the money should be paid to him by the bank, it was impressed with a trust in favor of the church and should be paid over by him to the church. *Held*, that the entry and testimony show that it was the intention of the testatrix to create a trust in favor of the church, and hence the decree should be affirmed.

APPEAL from the Circuit Court of Baltimore City.

Mr. William M. Maloy and *Mr. George M. Brady* for appellant.

Mr. David S. Briscoe for appellee.

Argued before McSherry, C. J.; Fowler, Briscoe, Boyd, Page, Pearce, Schmucker, and Jones, J. J.

FOWLER, J.—The bill in this case was filed by Ward P. Littig, executor of Kate Littig, for the purpose of having a sum of money deposited in the Provident Savings Bank of Baltimore decreed to be a part of her estate. The defendants, the vestry of Mount Calvary Church and the Savings Bank, failed to answer. A decree pro confesso was obtained, testimony was taken, and the case was referred to Alexander H. Robertson, Esq., auditor and master, who subsequently filed a report holding that the fund in bank should be paid to the plaintiff as executor, but that it was impressed with a trust in favor of the defendant church, and he recommended that a decree be passed directing the fund to be paid over to the plaintiff, to be by him held in trust for and paid to said church. A decree was passed in accordance with this recommendation, and the plaintiff appealed.

The facts are few and may be briefly stated. Miss Littig opened an account with the Provident Savings Bank of Baltimore. The bill alleges and the testimony shows that the entry on the books of the bank is as follows: "Mount Calvary Protestant Episcopal Church, subject to the order of Kate Littig, trustee, $500." If this were all, there could be no question whatever that this entry amounts to a declaration of trust in favor of the church.

In the case of Milholland v. Whalen, 89 Md. 212, the entry upon the books of the bank was "in account with Miss Elizabeth O'Neill in trust for herself and Mrs. Mary Whalen, joint owners, subject to the order of either, the balance at the death of either to belong to the survivor." It was held that Mrs. Whalen as cestui que trust was entitled to the fund.

In the course of the opinion delivered by the present chief justice it is said: "In Maryland it is not requisite that the cestui que trust should be notified of the declaration or establishment of the trust. It is the donor's act which originates the trust, and it is the intention with which he does the act that is material. The entry unexplained is a sufficient declaration of trust, because it indicates an intention to establish a trust, but this may be rebutted."

And again, quoting from Jones v. Lock, L. R., 1 Chy. App. 25, it is said: "The authorities all turn upon the question whether what took place was a declaration of trust, or merely an imperfect attempt to make a legal transfer of the property. In the latter case the court will afford no assistance whatever to volunteers; but when the court considers that there has been a declaration of trust, it is a trust executed, and the court will enforce it whether with or without considerations."

The wide difference between a declaration of trust and gifts, either inter vivos or causa mortis is there also pointed out, and it is said such gifts, to be effective at all, require a delivery of the thing itself, and must pass the whole title, so that the donor can have no further dominion or control of it; but a gift in trust withholds the legal title from the donee.

The legal title may be transmitted to a third person, or it may be retained by the donor, but in either case the equitable title has gone from him, and unless the declaration of trust contains a power of revocation it leaves him powerless to extinguish the trust.

But it is contended by the plaintiff that whatever may be the effect of the entry standing alone, the testimony shows that it was not the intention of Miss Littig to create a trust fund in favor of the church. In support of this contention reliance is placed upon the testimony of the officers of the bank, which was substantially that Miss Littig wanted to leave some money so that the Mt. Calvary Church would get it after her death, but that she did not wish to give the church the money during her life for fear she might need it herself; that her intention was if she did not draw the money during her lifetime for her own use that it should go to the church after her death, and that she intended to retain control of it for her own use as long as she lived.

This testimony, however, in our opinion, so far from showing no trust, was declared by Miss Littig, only shows that she intended to reserve a power of revocation, and that her real intention, as declared to one of the witnesses, and testified to by him, was that she wanted the church to have the money if she did not revoke the trust and use the fund during her life.

The question presented by this record has been so elaborately considered in the recent and leading case of Milholland v. Whalen, supra, that we deem it unnecessary to prolong this opinion by any further discussion.

Decree affirmed.

A finding by a coroner's jury that a person came to his death by a wound inflicted by himself with suicidal intent, is held, in Ætna Life Ins. Co. v. Milward (Ky.), 68 L. R. A. 285, not to be admissible in an action upon a policy of accident insurance upon his life. The admissibility of the finding of a coroner to show cause of death is the subject of a note to this case.

Digitized by Google

Legal Effect of Use of Terms Wilful, Abandoned, Reckless, and Wanton Neglect.

In Southwest Missouri Electric Railway Co. v. Fry, decided by the Supreme Court of Kansas, the action was by the parents of a minor child to recover damages for his death caused by his being run over by a street car. The petition alleged that the child came to his death by the employees of the defendant "carelessly, negligently, recklessly, and wantonly running said car upon and over" the body of the child, instantly killing him. It was held that the petition was sufficient in its allegations to sustain a verdict for damages, notwithstanding a special finding that the injury was not inflicted through the "reckless and wanton neglect of the defendant's employees in charge of the car."

The decision is reported in the Central Law Journal, and in a note appended thereto the legal effect of the use of the terms wilful, abandoned, reckless, and wanton neglect is discussed as follows:

In the above case the jury found for the plaintiff, because there was evidence of negligence on the part of the street car company in managing that car, but did not find that it amounted to reckless or wanton negligence. In other words, the jury found that there could be no recovery for any reckless or wanton neglect on the part of the defendant. Had the jury found that the death of the child was caused by the reckless or wanton neglect of the railroad company, it then should have added punitory damages, in addition to compensatory damages. The point is that, with a petition stating that the injury was inflicted wantonly, wilfully, and recklessly, if the jury found that it was not done wantonly, wilfully, recklessly, and negligently, what right had the plaintiff to recover? All that was necessary to have stated was that the injury was negligently committed. But the greater includes the less, so that if the jury found that the plaintiff was entitled to verdict it could only have been on account of simple negligence, although the allegations included the words wanton and reckless negligence. If the charge is wanton and reckless negligence and the jury found that the defendant was guilty of ordinary negligence the allegation would support a verdict.

In the case of Heim v. McCaughan, 32 Miss. 17, the plaintiff was allowed to show, in aggravation of damages, that his physical condition unfitted him to bear the exposure to which he was subjected, in consequence of the carrier's neglect to stop a boat according to his advertisement and take him on board, and it was held that exemplary damages might be recovered if such conduct was wilful and capricious. It has also been held that exemplary damages may be given in cases where there was a wilful, reckless, or capricious neglect to stop a train at a station where it should have stopped, upon being signaled to do so, independently of the health of the person who desired to be a passenger. Wilson v. New Orleans & N. R. R. Co., 63 Miss. 352; Ala., etc., R. Co. v. Sellers, 93 Ala. 9, 9 So. Rep. 375, 30 Am. St. Rep. 17; Thomas v. Southern R. Co., 122 N. Car. 1005, 30 S. E. Rep. 343. Compare Martin v. Columbia & G. R. Co., 32 S. Car. 592, 10 S. E. Rep. 960. And where there was such a neglect to stop a street car, the employee having insulted the person who desired the car stopped, on his thereafter becoming a passenger. Jackson Electric R. L. & P. Co. v. Lowry, 79 Miss. 431, 30 So. Rep. 634. See, also, secs. 950, 951, Sutherland on Damages, 3d ed., vol. III. If in a case where the petitions charged wanton, wilful, and reckless negligence, the court should charge that the plaintiff could not recover in such suit unless the jury found the acts of the plaintiff to have been done wantonly, wilfully, and recklessly; there is no doubt but the court would be making a mistake, because wanton, wilful, and reckless, does not exclude the idea that the act may have, nevertheless, been negligently committed.

The rule adopted by the New York courts is such as not to permit the recovery of exemplary damages against the master for the act of negligence of his servant, unless he has authorized his act, or ratified it while such servant was in his office. Cleghorn v. N. Y. C. & H. R. R. Co., 56 N. Y. 44; Hendricks v. Sixth Av. R. Co., 12 J. & S. 8; Murphy v. Cent. P. & R. Co., 16 Id. 96; Fisher v. M. E. & R., 34 Hun. 333. This is the same in the United States. Lake Shore & Mich. So. v. Prentice, 147 U. S. 101. In Colorado not allowed (Greely v. Yeager, 11 Colo. 345) unless proof of authority or valification. Same in Connecticut. Messenbasher v. Concordia Society. Not allowed in Indiana. Humphries v. Johnson, 20 Ind. 190. Not allowed in Nebraska. Boyer v. Barr, 8 Neb. 68. New Hampshire. Fay v. Parker, 53 N. H. 342. New Jersey same as New York. Frohman v. Consolidated T. Co., 63 N. J. L. 391. Rhode Island same as New York. Higgin v. Providence, etc. R. Co., 3 R. I. 88. All other States allow exemplary damages for the gross, wanton, malicious or wilful negligence of servants of corporations. Just why corporations should not be held bound by the same rules as private parties does not seem clear, that is to say, those States which hold that, the act of the servant must, in some way, have been ratified by the corporation before the corporation may be held to respond in punitive damages, is not based on general principles, and is against the decided right of authority.

If heavy punitive damages were given in those railroad accidents, which have been caused by the reckless negligence of servants, there would be greater care exercised in the selection of servants for those places where great care should be exercised to avoid accidents. The case of Goddard v. The Grand Trunk Railway Company of Canada, 57 Me. 202, 8 American Negligence Cases, 316, is the leading case on the question holding a corporation liable for the wilful misconduct of its servants toward passengers and giving punitive damages in such cases. In 8 Am. Neg. Cas. 330, Judge Walton states the doctrine in vigorous language: "We have given to this objection much consideration, as it was our duty to do, for the presiding judge declined to instruct the jury that if the acts and words of the defendant's servants were

Digitized by Google

not directly nor impliedly authorized nor ratified by the defendant, the plaintiff could not recover exemplary damages. We confess that it seems to us that there is no class of cases where such a rule is less applicable than to railroad corporations in their capacity of common carriers of passengers, and it might as well not be applied to them at all as to limit its application to cases where the servant is directly or impliedly commanded by the corporation to maltreat and insult a passenger, or to cases where such an act is directly or impliedly ratified, for no such cases will ever occur.

A corporation is an imaginary being. It has no mind but the mind of its servants. It has no voice but the voice of its servants; and it has no hands with which to act but the hands of its servants. All its schemes of mischief as well as its schemes of public enterprise are conceived by human minds and executed with human hands, and these hands and minds are its servants' hands and minds; all attempts, therefore, to distinguish between the guilt of the servant or the guilt of the corporation, or the malice of the servant or the malice of the corporation, or the punishment of the servant or the punishment of the corporation, is sheer nonsense and only tends to confuse the mind and confound the judgment. Neither guilt, malice, nor suffering predicable for this ideal existence called a corporation, and yet under the cover of its name and authority there is in fact as much wickedness and as much that is deserving of punishment as can be found anywhere else, and since these ideal existences can neither be whipped, hung, imprisoned, or put in the stocks—since no corrective influence can be brought to bear upon them except that of pecuniary loss—it does seem to us that the doctrine of exemplary damages is more beneficial in its application to them than in its application to natural persons.

If those who are in the habit of thinking it is a terrible hardship to punish an innocent corporation for the wickedness of its servants and agents, will reflect for a moment upon the absurdity of their own thoughts their anxiety will be cured. Careful engineers can be selected who will not run their trains into open draws, and careful baggagemen can be secured who will not handle and smash trunks and bandboxes, as is now the universal custom, and conductors and brakemen can be had who will not assault and insult passengers, and if the courts will only let the verdicts of upright and intelligent juries alone, and let the doctrine of exemplary damages have its legitimate influence, we predict those great and growing evils will be very much lessened if not entirely cured. There is but one vulnerable point about these ideal existences called corporations and that is the pocket of the monied power that lies concealed behind them, and if this is reached they will wince. When it is thoroughly understood that it is not profitable to employ careless and indifferent agents, or reckless and insolent servants, better men will take their places and not before." This opinion was written in 1869, but is as applicable now as then, but for some reason there has been a hesitancy on the part of courts to grant punitive damages in our own day and generation.

In Atchison v. Wills, decided by the Court of Appeals of this District (31 Wash. Law Rep. 311), the declaration in an action for personal injuries alleged that the injuries complained of were occasioned by the gross and wanton neglect of the defendant's employees. It was contended for the defendant that this allegation made it incumbent upon the plaintiff to give affirmative proof of the case as alleged, and that proof of ordinary negligence only was a fatal variance. In denying this contention, the Court of Appeals, in an opinion by Mr. Chief Justice Alvey, held that such allegation imposed upon the plaintiff no greater burden of proof than to show that the employees of defendant did not use the care that was required to avoid the accident. In that case, after admitting that some decisions had held in accordance with the contention of the defendant, the court said:

"But the great weight of authority, and especially of recent decisions, is clearly against the contention of the defendant in this case. The distinction between negligence and gross negligence, carelessness and gross carelessness, is to a great extent merely verbal. It is simply negligence with a strong adjective of qualification or description. There can be, legally speaking, no degrees of negligence on the part of the defendant, any more than there can be degrees of due care on the part of the plaintiff, for, in respect of the same transaction, the presence of the one element of conduct implies the absence of the other. Any negligence, therefore, which is legally sufficient to charge the defendant with liability is, in a legal sense, gross negligence, and the question whether the defendant is to be charged therewith, as being a question of fact, must depend upon the circumstances of the case, as must also the question whether the plaintiff was in the exercise of due care, or, in other words, not guilty of contributory negligence."

Bills and Notes—Procurement by Fraud—Liability of Maker—Negligence.

In Home National Bank v. Hill, decided by the Supreme Court of Indiana in June, 1905, 74 N. E. 1086, it was held that one who negligently signs a negotiable promissory note is liable thereon at the suit of a bona fide holder, although his signature is procured by fraud and without consideration, but one who without negligence is induced to sign a negotiable note by fraudulent practices leading him to believe that he is signing an instrument of a different character is not liable thereon, although it has passed into the hands of a bona fide purchaser.

It was laid down that the question of negligence in signing a negotiable paper in ignorance of its true character is usually one of fact for the determination of the court or jury trying the cause, but it becomes one of law when the state of facts is established or is undisputed.

It appeared that defendant was surety on a guardian's bond. The attorney for the guardian went to defendant with a pretended petition

Digitized by Google

for an order of court in the matter of the guardianship. Defendant read the petition sufficiently to understand its nature, and consented to sign the same at the attorney's solicitation. The attorney, during defendant's temporary absence from the room, artfully inserted a blank promissory note between the folds of the petition in such manner as to conceal all of the printed parts of the note, leaving exposed the lines which were intended for signatures, and pointed out to defendant the place where he should sign his name. Defendant, in ignorance of the trick, signed the note, and the attorney, without letting defendant see the papers again, filled in the blanks of the note and negotiated the same. Defendant was about 72 years of age, a farmer, of ordinary intelligence, could read and write, but was unfamiliar with court proceedings. His daughter was in the house on the occasion of the fraud, but he neglected to call her to his assistance in the matter. It was held that defendant was guilty of no negligence in signing the note, and could not be held liable thereon at the suit of a bona fide holder. The court said in part:

That appellee, under all of the circumstances, should have believed and relied on the statements or representations of Cunningham in regard to the purpose of the petition which he had agreed to sign, is certainly not unreasonable.

Appellant's contention that he did not exercise proper precaution or care in the matter or transaction in question is not sustained by the facts. That Cunningham was enabled to carry off the blank note after he had obtained appellee's signature thereto, and then convert it into a negotiable promissory note, and discount it at appellant's bank, does not, under the facts, appear in any manner to be due to an absence of proper precaution or care on the part of appellee. The following cases, in addition to those heretofore cited, support the doctrine or principle which we affirm and adhere to in this appeal: National Bank v. Lierman, 5 Neb. 247; Green v. Wilkie, 98 Iowa, 74, 66 N. W. 1046, 36 L. R. A. 434, 60 Am. St. Rep. 184; Soper v. Peck, 51 Mich. 563, 17 N. W. 57; Gibbs v. Linabury, 22 Mich. 479, 7 Am. Rep. 675; Whitney v. Snyder, 2 Lans. (N. Y.) 477; National, &c., Bank v. Veneman, 43 Hun. (N. Y.) 241; Butler v. Carns, 37 Wis. 61; Kagel v. Totten, 59 Md. 447; Trambly v. Ricard, 130 Mass. 259; Griffiths v. Kellogg, 39 Wis. 290, 20 Am. Rep. 48; Bowers v. Thomas, 62 Wis. 480, 22 N. W. 710; Willard v. Nelson, 35 Neb. 651, 53 N. W. 572, 37 Am. St. Rep. 455.

Copyright—Action to Recover Penalty for Infringment—Evidence.

In Werckmeister v. Am. Tobacco Co., decided by the United States Circuit Court, S. D. New York, in March, 1905 (138 Fed. 162), it was held that in a suit under Rev. St., sec. 4965 (U. S. Comp. St. 1901, p. 3414), to recover the penalty of $10 for each infringing copy of a copyrighted painting in defendant's possession, the judgment in a prior action in replevin brought under the same section, in which plaintiff recovered the infringing sheets, is not evidence that they were found in defendant's possession, although it recites that such was the fact, since that question was not an issue, nor a finding upon it essential to a forfeiture of the sheets. The court said:

Section 4965, Rev. St. U. S. (U. S. Comp. St. 1901, p. 3414), provides that, if any person shall infringe a copyright in any of the ways specified—

"He shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary he shall forfeit $10 for every copy of the same in his possession, or by him sold or exposed for sale, one-half thereof to the proprietor and the other half to the use of the United States."

The plaintiff, as proprietor of a copyrighted picture called "The Chorus," brought replevin to recover 1196 sheets of the same, as forfeited to him by the defendant, in which the marshal returned that he found the same in the possession of the defendant, and in which it was "adjudged that the plaintiff have and retain and is entitled to the possession of 1196 sheets, each containing a copy of the plaintiff's copyrighted picture 'Chorus,' found in the possession of the defendant, and replevined by the United States marshal as alleged in plaintiff's complaint." This suit is brought to recover $10, as forfeited for each of these copies, as found in possession of the defendant. Upon the trial the plaintiff offered no evidence of the finding of any copies of the picture in the possession of the defendant, but the record in the former case, whereupon a verdict for the defendant was directed, and this motion was made.

The plaintiff relies upon the recital in the former judgment as a conclusive adjudication that the sheets were found in the possession of the defendant. As to this it is to be noticed that there are, or may be thought to be, two distinct forfeitures imposed by this statute—one of the sheets, wherever found, to the proprietor, and the other of $10 to him and the United States for each sheet found in the possession of the defendant. In the former suit the material question would be as to whether there was infringement which would work a forfeiture of the title to the sheets, and the decision upon that may be so far conclusive. The question of finding in possession of the defendant was not material, but only incidental, and a finding upon that would not seem to be conclusive. It was not within the issue joined in the case upon which the parties would be bound to bring their proofs or afterwards remain silent concerning them, but was merely descriptive of the things forfeited and independent of that issue, and the finding upon it would not be material or conclusive. If this pecuniary forfeiture is only a part of the same forfeiture as that of the sheets, there could, on familiar principles, be but one recovery upon the one forfeiture, and, there having been one recovery of the sheets, the right of recovery would be satisfied, and there could not be another of the money. The decided cases do not seem to be in harmony about this, but, whichever are right, it seems clear that, if there is but one forfeiture there has been one

Digitized by Google

recovery, which is all there can be, and if there are two there are two different issues to be tried on evidence of facts constituting each forfeiture in each action, respectively. And if there are two forfeitures there must be two actions, for the rights are different—one belonging to the proprietor alone and the other to him and the United States. A judgment for the proprietor would not conclude the United States, and consequently not the defendant, for both parties must be concluded by an estoppel or neither is.

Disqualification of Executors on Other Than Statutory Grounds—Personal and Immoral Unfitness.

[Central Law Jounal.]

Statutes exist in most States relative to the qualification of executors. A recent case decided by the Supreme Court of Illinois (Clark v. Patterson, 214 Ill. 533) is instructive as to whether other disqualifications may be urged by the children and heirs at law of the testator to the appointment and qualification of an executor named in the will than those specifically mentioned in the statute. In other words, may the probate court, or other court charged with the power of issuing letters testamentary, go outside of the strict letter of the statute and refuse letters to a person named in the will as executor on the ground of personal unfitness or moral degradation alleged against such person? Is the statute mandatory?

It has been contended with much force, and the public policy of a few States seems to be, that the court issuing letters testamentary should have discretion in determining the qualification of executors, or, at least, a supervisory power in that regard. The contention is based upon the idea that if the testator in the selection of his executors should select a person of bad morals, or questionable personal habits, or with whom illicit relations had been sustained, the court should be empowered to overrule such selection and refuse letters to such applicant.

On the other hand, it is contended, and the great weight of authority supports such contention, that the testator being of sound and disposing mind and memory, and being the absolute and unqualified owner of the subject-matter of his benefactions, to which the doctrine of jus disponendi attaches, has the absolute right, subject only to the statutory limitations and the common law requirements as to sanity to make his own selection of agents or instrumentalities who are to succeed to the management of his estate and the distribution thereof after his decease. The power to extend or limit the qualification of executors is the exercise of a legitimate legislative function and when that power has been exercised by the designation of persons who may or may not be qualified as executors it is not within the province of judicial authority to read into the statute additional grounds of disqualification. In a word, the statute will not be extended by judicial construction. Stated in its broadest and general terms the proposition would seem to be unquestioned that a person of disposing mind has a legal, equitable, and property right to select the agents to whom he intrusts the management of his property while living and has a tantamount right to select the agencies to whom he may intrust the management and disposition of his property after his death. It may be in particular cases the testator, in his selection, will be governed by whims and caprice, but it may also be equally true that legatees and beneficiaries may be influenced by capricious motives.

A mistaken idea seems to be countenanced in some of the reported decisions that an executor is appointed by the court issuing the letters testamentary, but in fact the selection and appointment are made by the testator and the letters are merely evidence of his authority to act under a will judicially determined to be valid.

Illustrative of the principles stated above a few leading, and, as we think, controlling cases are now referred to. In Saxe v. Saxe, 97 N. W. Rep. 187 (Wis.), objections were filed to the qualification of the executor based upon the alleged abuse of his stepmother; that he was obnoxious to the objecting heirs; that his character was not such as to inspire confidence and trust. The court held that inasmuch as the objections related to the temper, disposition, habits, and moral character of the executor rather than to his capacity to do business they were not available to set aside the expressed wish of the testator; that an executor according to the common law doctrine derives his office solely from the will by which he is appointed and not from the probate which is held to be only evidence of his right; that the authority of the court in the premises is limited to qualifying the executor and issuing letters testamentary and does not extend to the appointment, as that authority pertains to the testator alone. Citing 11 Am. & Eng. Ency. Law, 2d ed., pp. 744, 745; In re Somervail, 104 Wis. 72, 80 N. W. Rep. 65; Schouler's Ex. & Admrs., sec. 33, 2d ed. The court overruled the objections and held that the executor was legally competent to act as executor within the meaning of sec. 3792, Rev. St. 1898, and hence that the statute was mandatory and required the county court to give effect to the expressed wish of the testator by appointing him as such executor.

To the same effect is Smith's appeal, 61 Conn. 420, 24 Atl. Rep. 273, 16 L. R. A. 538, where it was alleged that the executor named in the will was incapable of accepting the trust because he was not a man of honesty and integrity and experience in business. The court held that the moral unfitness of the person appointed as executor of a will can not be inquired by the court to which he applied for permission to qualify, and that he derived his office from testamentary appointment, and if he was a person not disqualified by law from being an executor the court had no right to refuse to permit him to qualify or to refuse to grant him letters testamentary.

The Court of Appeals of New York, in McGregor v. McGregor, 3 Abbott's Appeal, 92, says: "I am of the opinion that any person appointed or named executor on the ground of his immorality, executor in a will is to be deemed to be competent unless he is declared incompetent by statute, and that it is the duty of the surrogate to grant

Digitized by Google

letters to every person named executor in a will upon his application who is not incompetent by some statute. He has no discretion in the matter, but must obey the requirements of the statute which is the sole source of his power. To allow surrogates to invent new causes of disqualification and add to those prescribed by statute would be conferring novel and dangerous powers upon those officers of special and limited jurisdiction."

In Berry v. Hamilton, 12 B. Monroe 11, 54 Am. Dec. 515, objection was made to the court says: "If the opinions of men in regard to the moral characters of those who may be appointed executors, and in whom testators repose confidence, whatever those opinions may be are to be received and are to constitute the evidence by which, in law, we are to ascertain who may and who may not be appointed executors, we apprehend that but a few appointments would fail to be contested by some of the relatives of testators, who are often too easy to be dissatisfied, or by persons who themselves desire to be administrators for personal aggrandizement, or who would rejoice in so fit an opportunity to gratify some private hatred.

"Such inquiries would involve questions of very difficult and doubtful decision—such as, how good a man must be to qualify him for executor and how bad he must be to disqualify him—how could any certain rule of determination be established? Inquiries of such a nature would be the most vague and uncertain in their results of any ever instituted in a court of justice, and would, in our opinion, be absurd in the extreme. Besides, to allow an inquisition of this sort would be to deny to men a privilege which for centuries has been held to be most sacred and dear—that of freely disposing of their own property to whom they please, and of appointing trustees of their own choice to manage and control it when they are no more. . . . And men, it seems to us, would care but little for the high privilege of disposing of their estates to their own liking, if they are to be denied the right of selecting those who are to carry out and effectuate the benevolent purpose of their wills. It is true some persons are incapable of being executors—the law has pointed out who they are, and society has long been satisfied with the wisdom of the rules upon this subject."

Insurance—Breach of Warranty.

In the case of The Mutual Reserve Life Insurance Company v. Dobler, decided by the United States Circuit Court of Appeals for the Ninth Circuit, it appeared that an application for life insurance requested insured to answer whether he then had any insurance on his life. He answered, giving the name and amount of a life-insurance policy, and the name of the company writing the same. There was a further question, "Have you any other insurance?" which he answered, "None." It was held that such questions did not call for an answer as to other than life insurance, so that insured's failure to disclose that he then had certain policies of accident insurance did not constitute a breach of warranty. The court said that where questions asked by an insurance company in an application were of doubtful import, insurer was bound by an answer to which the questions were properly susceptible; also that where insured answered certain questions with reference to when he last consulted a physician, the name of the physician, the reason, etc., by stating that he did not remember when he had consulted a physician, that it was years ago, the fact that on several occasions a physician, who was a friend of insured, made physical examinations of him without charge, for the purpose of ascertaining his physical condition, on the physician's own initiative, and without finding any physical infirmity, and without prescribing for insured, did not show that such answers were untrue.

The Equity of Marshaling.

[Harvard Law Review.]

Where one creditor may resort to two securities for the payment of his debt while another has a subsequent claim upon only one of them, the former will be compelled in equity, in so far as he may not be prejudiced, first to exhaust that security which the latter can not reach.

Thus if A has mortgages of Whiteacre and of Blackacre, and B has a second mortgage upon Blackacre only, B may, in foreclosure proceedings, require A to resort first to Whiteacre. Aldrich v. Cooper, 8 Ves. 382, 394. And if A in fact proceeds first against Blackacre, B may reach Whiteacre by subrogation. Gibson v. Seagrim, 20 Beav. 614. In the United States the majority of the courts say that B has a fixed equitable right in Whiteacre, which, like ordinary equities, persists until the res gets to a bona fide purchaser, so that B may still marshal A against Whiteacre after it has been mortgaged to C with notice of the other mortgages. Robeson's Appeal, 117 Pa. St. 628.

The English courts deny that any equitable right arises until foreclosure proceedings are commenced. Accordingly, as between B and C, they pay A's mortgage ratably from Whiteacre and Blackacre. Barnes v. Racster, 1 Y. & C. C. C. 401.

This conflict of authority appears to turn on the nature of marshaling. Marshaling is an equitable procedure to apply assets in accordance with the rights of the parties under the circumstances presented to the court, whether in the payment of creditors from a decedent's estate or in the satisfaction of claimants from overlapping securities. It is part of the broad question, what property can be reached to satisfy an obligation, and is therefore a matter of remedy to be determined by the law of the forum at the time of the suit. Cf. Mineral Point R. R. Co. v. Barron, 83 Ill. 365.

This reasoning accords with the English view. In the one American case, however, which squarely raised the point in this form, a majority of the court held that it was a matter of right, to be governed by the law at the time of B's mortgage. Bank of Orangeburg v. Kohn, 52 S. C. 120.

Granting the correctness of the English theory, it does not follow, however, that the general result under the prevalent American view is wrong. The conflict should be regarded as a difference, not of legal principle but of fact,

Digitized by Google

namely, whether under the circumstances it is fairer that C should exonerate B, or that they should contribute ratably, and on this courts may well differ.

Where part of property subject to three mortgages was taken for a railroad and, pending the suit for compensation, which was to be be subject to the mortgages, the third mortgage was cut out of the remaining land by a foreclosure of the second mortgage, it was recently held, approving the English cases, that the first mortgage could not be marshaled against the land in the hands of the purchaser at the foreclosure sale, but should be paid ratably from the land and the compensation money. Bates v. Boston Elev. R. Co., 72 N. E. Rep. 1017 (Mass.). These facts neatly avoid the general conflict so that no other decision would be justified, for, the moment the third mortgagee is in a position to seek marshaling against the land, the purchaser at foreclosure is on hand seeking similar relief against the compensation money. The situation would be the same if simultaneous mortgages were made of Blackacre and Whiteacre to B and C respectively. Neither deserves a preference.

The "Celebrated Steer Case."

At the December call of the Kansas City Court of Appeals docket, the biggest case over a small matter ever tried in Missouri passed into history. The style of the action was John Massengale v. Elijah E. Rice. The appellate court's uncontested order of affirmance crowned Elijah with the victor's laurel wreath.

The subject of litigation was a spindle-shanked steer, "a very ordinary animal, a scrub," the plaintiff said, "worth about $30." The life of the steer fight and the great civil war were about the same—five years.

If there is a Missourian who has not heard of the "Celebrated Steer Case," it is because his parents were shamefully derelict in their educational obligations to him. It has become a part of the State's fame, just as in less peaceful days Charles Quantrell, Bill Anderson, and the James boys enriched the commonwealth's history with a certain distinction.

In September, 1899, John Massengale, of Macon county (known as "Missouri John" when herding cattle back in Wyoming), missed from his ranch a small red steer. It didn't bother him much, because he had a thousand of much better quality left, and he never lost any time in hunting up the prodigal. But one evil day a horseman came along the road and called "Missouri John" out. He told him he had seen his missing animal down on Rice's farm, which was just across the line in Chariton County. John went over to see Farmer Rice. Together they visited the herd, and Massengale promptly spied the scrub.

"That's mine, Elijah," he said.

"No, John," replied Elijah, "we raised that steer ourselves."

Massengale telephoned to his lawyer at Macon and a suit in replevin was filed. Before the justice the plaintiff described his animal as "a dark red steer, a round body, rather a small, dark two-year-old, a little under average size, with a white spot in his forehead, and an underbit in the right ear."

Elijah gave the description of his steer as follows: "Well, the steer is what I would call a red steer. He had just a white spot on his forehead, with an underbit in the right ear."

The similitude of belief furnished beautiful grounds for warfare. Both men had money burning in their pockets. The border was soon aroused by adherents of the two prominent litigants. "Missouri John" had begun his career by rounding up cattle in the west and he knew he could not be mistaken. Elijah had grown up in the valleys where a man's social success was rated according to his knowledge of steercraft, and he felt that he knew the subject of controversy as well as he did any member of his family. In passing, it may be remarked that it is fairly safe to criticize a cattleman's command of the King's English, or his manners at the dinner table, but when you challenge his capacity to identify anything that wears horns you can look for trouble with entire confidence.

There were seven trials. Hung juries, appeals, and changes of venue strung the litigation out half a decade. It traveled along a highway paved with shining dollars, until at the climax it was figured the unsuccessful litigant stood to lose $5,000.

The case would have ended in 1900, but at the very end of the trial, during a strong appeal to the jury, Elijah's leading lawyer, J. A. Collect, used this language, taken from the printed record: "Massengale obtained his start by rounding up unbranded cattle in the west, and branding them as his own. In the west they call that 'branding mavericks,' but here in Missouri we call it plain-out cattle stealing."

That short tirade cost Elijah $300, for the plaintiff appealed on the ground that there was no evidence in the record to justify the attack, and after the appellate court had read through the 275 printed pages it so held, and Elijah had to pay for the brief.

During the life of the steer case it had been tried at Bynumville, Salisbury, Kansas City, and Fayette. When the trial was "on" in a town, the tavern keepers would send out for extra help in the cook room and buy out the grocers. Each side levied on its respective township for witnesses, and when the two clans would meet in a town there wasn't much room for anybody else.

The case was fought out with varying honors until a fatal day in last April, when a jury came into court at Fayette and said the steer belonged to Elijah.

"Missouri John's" lawyers went through the long record of the last trial with a microscope, and then met their client at Macon.

"The jig's up, John," said one of the barristers, gravely. "There ain't the ghost of a ground to hang an appeal on this time."

"We're beat, you mean?" asked the big ranchman.

"You've guessed right."

"Well," said John, "I hate a croaker. I went to law for a measly, spindle-shanked steer, and I am going to take what the law hands out. Figure up what the fun has cost me, boys, and the check's ready."

He sat awhile and calmly pulled at his pipe. Then he picked up his sombrero and walked to the door, where he hesitated and looked back.

Digitized by Google

"But, say, fellers," he remarked, "that was my steer!"

The defendant notified "Missouri John's" attorneys that he would file a motion for affirmance in the court of appeals at the fall term, and they told him to go ahead—they were tired.

The steer is still enjoying life on Elijah's broad pastures. He has recently had it photographed and to show he entertains no ill-will has sent copies of the picture to "Missouri John" and his four lawyers.—Green Bag.

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Washington College of Law,

1403 New York Ave. N. W.

Ninth year opens **Monday, October 2, at 7 p. m.**, with an introductory lecture, to which the public is cordially invited.

Three years' course leading to degree of LL. B. Postgraduate courses of one year leading to degree of LL. M.

Full corps of eighteen lecturers and professors. Admits as students women and men properly qualified. Lectures between 6.30 and 9 p. m. Tuition, $50 a year.

For year books or further information apply to the Dean.

E. S. MUSSEY, LL. M.,

'Phone Main 4585. 1701 416 Fifth St. N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Alice Bland McAboy, Deceased.
No. 13,181. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Theodore N. McAboy, it is ordered this 7th day of September, A. D. 1905, that notice be and hereby is given to **Louise B. Legge, Austin Brockenbrough, Fanny Compton Frere, Ella Beckwith Lawton, Elizabeth Beckwith, and Brockenbrough Beckwith**, and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 36-3t

Legal Notices.

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alexander Melville Bell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,130. Admn. [Seal.] 36-3t

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William G. Zimmerman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of September, 1905. JOHANNA M. ZIMMERMAN, 912 8th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,146. Administration. [Seal.] 36-3t

Coldren & Fenning, Solicitors

In the Supreme Court of the District of Columbia.
Jennie M. Payne, Complainant, v. Thomas E. Waggaman, James B. Nicholson, Samuel E. Allen, Jr., John Sherman, Ella B. Sherman, Irving Williamson, Lawrence P. Graham, Josephine Chamberlain, R. W. McPherson, M. A. McPherson, E. T. McPherson, Stephen McArdle, the President and Directors of Georgetown College, H. Rozier Dulaney, Samuel Waggaman, and the Catholic University of America, a corporation, Defendants.
In Equity. No. 24,987.

Fred G. Coldren and Irving Williamson, trustees, having reported to the court that they have sold the real estate described as lots numbered 15, 16, and 17, in block 6 of Thomas E. Waggaman's subdivision of "Rosedale," now known as "Cleveland Park," as per plat recorded in the office of the surveyor for the District of Columbia, in liber county 9, folio 71, at public auction, to Oscar Luckett, as trustee for Josephine Chamberlain and the other holders of the notes secured by the first deed of trust on said property as shown by the amended bill herein, for the sum of $7,500, it is this 7th day of September, 1905, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of October, A. D. 1905**. Provided, a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. [Seal] 36-3t

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Ellen Thompson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 29th day of September, 1905, at 10 o'clock A. M.**, as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of September, 1905. CHARLES W. FLOECKHER, by R. Preston Shealey, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,346. Administration. [Seal.] 36-3t

Digitized by Google

Legal Notices.

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.
Union Trust Company v. C. P. Storrs et al.
No. 25,642. Equity Docket No. 57.

The object of this suit is to ascertain the ownership of a certain sum of money on deposit in complainant's banking department to the joint credit of the defendants, R. Randolph Hicks and C. P. Storrs, complainant having been advised that each of said defendants is now claiming said fund to the exclusion of the other. On motion of the complainant, it is, this 6th day of September, A. D. 1905, ordered that the defendant, C. P. Storrs, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter.

[Seal] By the Court: ASHLEY M. GOULD, Justice.
A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-3t

H. H. Glassie and A. George Maul, Solicitors

In the Supreme Court of the District of Columbia.
Ross W. Morrison, Complainant, v. Annie E. Morrison, George L. Devers, Co-respondent, Defendants.
In Equity. No. 24,067.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 30th day of August, A. D. 1905, ordered that the defendant, **George L. Devers**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Times for three consecutive weeks prior to said day for once in each week.

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-3t

SECOND INSERTION.

Ralston & Siddons, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John Hay**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of August, 1905. J. W. WADSWORTH, JR., Mt. Morris, N. Y.; PAYNE WHITNEY, 51 Wall st., New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,136. Administration. 35-3t

W. E. Harvey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel A. Connolly, Deceased.
No. 1179. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonus non on said estate, by William B. King, it is ordered this 29th day of August, A. D. 1905, that notice be and hereby is given to **unknown next of kin** and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices.

A. Leftwich Sinclair, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Johanna Engel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1905. NORMAN T. ENGEL, 590 Center Market. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,096. Administration. 35-3t

Lester & Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James Coleman, sometimes known as James Colemon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **28th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of August, 1905. E. L. SCHMIDT, HARRY M. PACKARD, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,118. Administration. 35-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caleb C. Willard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of August, 1905. KATE WILLARD BOYD, 1315 P st. N. W.; HENRY K. WILLARD, Kellogg Building; GEORGE E. HOWE, care of Henry K. Willard, Kellogg Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,101. Administration. 35-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Philo J. Lockwood**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. 35-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louis Kurtz, Senior**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1905. ROBERT H. T. LEIPOLD, 1300 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,112. Administration. 35-3t

Digitized by Google

Legal Notices.

THIRD INSERTION.

H. Winship Wheatley, Attorney
In Justice's Court of the District of Columbia, Sub-District, No 2.
Northwest Eckington Improvement Company, a Corporation, v. Jane Arnold. At Law, No. —.

ORDER OF PUBLICATION.

The object of this suit is to secure a judgment of condemnation of certain credits of the defendant amounting to one hundred and seventy-five 82-100 (175.82) dollars in the hands of a third party. It is, therefore this 19th day of August, A. D. 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order to defend this suit, and to show cause why the plaintiff should not have judgment as set forth above. Provided a copy of this order be published at least once a week for three (3) successive weeks in The Washington Law Reporter. SAML. C. MILLS, Justice of the Peace, 1205 G street N. W. 34-3t

B. F. Leighton, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary C. Griffith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 18th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of August, 1905. JOHN R. KING, 615 15th st. N. W.; LINNIE BELL BATES, 1104 L st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,115. Admn. 34-3t

Robt. E. Mattingly, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.
Estate of Margaret C. Mooney, Deceased.
No. 13,127. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Bettie Le Preux, it is ordered this 23d day of August, A. D. 1905, that notice be and hereby is given to **Mrs. Patrick Mooney, Mary Garbe, William Garbe, William Purcell, Florence Nicolls, Gertrude Mooney, Francis Mooney**, and **Walter Mooney**, and to all others concerned, to appear in said court on **Monday, the 25th day of September, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 34-3t

Julius I. Peyser, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Fannie Luchs**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 18th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of August, 1905. JOSEPH LUCHS, 823 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,117. Administration. 34-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W

Legal Notices.

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Lavinia A. Hall**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of September, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of August, 1905. L. CABELL WILLIAMSON. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,904. Administration. 34-3t

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Helen C. Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before **the 21st day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1905. ALLAN R. CAMPBELL, 25 Broad st., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,866. Administration. 34-3t

FOURTH INSERTION.

J. J. Darlington and W. C. Sullivan, Solicitors
In the Supreme Court of the District of Columbia.
Gilbert J. Osterman et al. v. Robert E. Poole et al.
No. 25,518. Equity.

The object of this suit is to perfect complainants' title to sublots 103 to 114, inclusive, square 104, Washington, D. C. On motion of the complainants, it is, this 10th day of August, A. D. 1905, ordered that the defendants, **Robert E. Poole, Susan Erwin, and Ann Council**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, **the unknown heirs, devisees, and alienees of Martin Casner, of Martin Kershnor, of Margaret Freeman, of Charles W. Goldsborough, and of Charles Henry Goldsborough**, cause their appearance to be entered herein on or before the rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the month following the first publication of this order, and twice a month for the two succeeding months, in The Washington Law Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clk.
au 11,18,25; sept. 8,22; oct. 13,27

FIFTH INSERTION.

John Ridout, Solicitor
In the Supreme Court of the District of Columbia.
Minna Schafer v. the Unknown Heirs, Devisees, and Alienees of Charles Wayman.
In Equity. No. 25,470.

The object of this suit is to establish of record the title in fee simple by adverse possession of the complainant to all of original lot eight, in square one hundred and ninety-six, in the city of Washington, in the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order, which is to be published twice a month for said period of three months in The Washington Law Reporter and the Washington Post, otherwise the cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. jul 14, 21; aug 11, 18; sept 8, 15.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 37

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - SEPTEMBER 15, 1905

CONTENTS.

Editorial 577
BRANCH APPELLATE COURT, FIRST DISTRICT OF ILLINOIS:
Robert Smith Parks, appellant, v. Northwestern University 579
Miscellany 581
Legal Notices 589

Death of Hon. Andrew B. Duvall.

The announcement of the death of Hon. Andrew B. Duvall, corporation counsel for the District of Columbia, which occurred on Tuesday, September 12, 1905, at sea, three days out from Liverpool, was a shock not only to the members of the bar, practically all of whom he numbered as his personal friends, but to the community at large. Mr. Duvall had been suffering from organic disease of the heart for some time prior to his departure for Europe in July last, but the latest information as to his condition was that he had recovered and had sailed for home on September 9.

Mr. Duvall was one of the most prominent and popular members of the District bar. His legal abilities were of a high order, and he filled the important position of corporation counsel for the District of Columbia with distinction. On more than one occasion he received the hearty indorsement of representative members of the bar for the position of justice of the Supreme Court of the District, and it was recognized on all sides that he possessed the qualities of mind and character fitting him for that high office.

Mr. Duvall was a native of this District, and was 58 years of age. He was graduated from the law school of Columbian University in 1869, and immediately thereafter began the practice of the law in this District. His ability as a lawyer and his high character as a man speedily secured him a lucrative clientele, which he retained throughout his life.

Mr. Duvall was an earnest Christian, and a leading member of the Metropolitan Methodist Church in this city. He enjoyed to an exceptional degree the confidence and affection of his associates at the bar, who deeply sympathize with his family in their great bereavement.

Death of Judge Charles F. Scott.

Judge Charles F. Scott, of the Police Court of this District, died at his residence in this city on Thursday evening, September 14, 1905. The announcement of his death was not unexpected, as he had been a great sufferer for some months with a complication of sciatica and stomach tumor.

Judge Scott was a native of West Virginia, in which State he began the practice of the law. In 1889 he removed to this city and entered the service of the Government as clerk of pardons in the Department of Justice. Subsequently he was appointed as a justice of the peace for this District, which position he filled but a short time when, in 1898, he was appointed police judge, serving in the latter capacity until his death. The important duties of the position were discharged by him in a manner that earned for him the cordial respect and esteem of the people of the District.

Georgetown University School of Law.

Attention is invited to the announcement, in another column, of the thirty-sixth annual session of the Georgetown University Law School, which opens on Wednesday evening, October 4, 1905, at which time announcements for the ensuing term will be made.

The exceptional advantages afforded by this institution for the successful study of the law are too well known to require enumeration. It occupies a place in the front rank of the law schools of the country, as is evidenced by the high position taken by its graduates wherever they have gone.

Two courses are offered, the first of three years leading to the degree of bachelor of laws, and a fourth year or post-graduate course which entitles the student who successfully completes it to the degree of master of laws. The fourth year class furnishes a rare opportunity for those desiring an advanced course in legal science; and it is gratifying to know that it is being availed of by an increasingly large number of students.

Two members have been added to the faculty, Hon. John W. Yerkes, as lecturer on railroad accident law and municipal corporations, and Mr. Aldis B. Browne, as lecturer on jurisdic-

Digitized by Google

tion and practice of the United States Courts. These subjects were formerly treated by the lamented Judge Charles C. Cole, who for some years prior to his death was an honored member of the faculty.

It is worthy of note that five of the six justices of the Supreme Court of this District, and two of the three justices of the Court of Appeals are members of the faculty of this school.

Indirect Advertisement by Lawyers.

The following provision on this subject is contained in the code of ethics of the Virginia State Bar Association:

"Indirect advertisement for business by furnishing or inspiring editorials or press notices regarding causes in which the attorney takes part, the manner in which they are conducted, and the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency and wholly unprofessional. Newspaper publications by an attorney as to the merits of pending or anticipated litigation call for the discussion and reply from the opposite party and tend to prevent a fair trial in the courts and otherwise prejudice the due administration of justice."

Washington College of Law.

The opening exercises of the tenth annual session of this institution will be held on Monday evening, October 2, 1905, in the law building. Established primarily for the benefit of women desiring to pursue the study of the law, this school has had a most successful career, and the advantages offered by it have been availed of by a large number of persons of both sexes. Two courses are open to students—a regular course leading to the degree of bachelor of laws, and a graduate course leading to that of master of laws.

Contract for Sale of Real Estate—Enforcement by Undisclosed Principal.

In Egle v. Morrison, decided by the Lucas (6th) Circuit Court of Ohio, and reported in the Ohio Law Bulletin, it is held that a written contract for the sale of real estate made and signed by an agent in his own name and without disclosing his agency or the name of his principal is binding on and may be enforced by his principal. The agency and assent of the principal may be established by parol evidence. Such a contract, it is held, satisfies the requirements of the Statute of Frauds. It is further held to be no defense to an action for specific performance of a contract, required by the Statute of Frauds to be in writing, that it is not signed by both parties thereto; it is sufficient if it is signed by one of the parties to be charged, and is accepted by the other; and acceptance by the latter is shown by his bringing suit upon the contract.

Power of Lawyer to Bind Partner in Purchase of Law Books.

A case of interest to both lawyers and publishers of law books is Alley v. Bowen-Merrill Co., 88 S. W. Rep. 838, wherein the Arkansas Supreme Court holds that a member of a firm of lawyers organized for the practice of law has implied authority to bind his partner by a written contract for the purchase of law books. The court agrees to the proposition that one member of a non-trading firm can not, as a rule, bind the other members by signing the firm name to negotiable paper (citing 22 Am. & Eng. Encyc. of Law, 2d ed., 154), but deems this to be because such transactions are not generally within the legitimate scope of the business of such firms. But "the purchase of law books reasonably necessary in the business," the court holds to be "a responsibility and liability incident to a partnership for the practice of law, and when lawyers come together for that business they are presumed to repose in one another the trust and confidence necessary to attend to the duty of purchasing law books for the firm and to clothe each with authority to bind the other."—Law Notes.

Collision—Electric Car—Negligence.

The Supreme Court of Minnesota held, in the case of Smith v. Minneapolis Street Railway Company, that where an electric car collided with a vehicle which, while being driven along a public street parallel and in the same direction with an advancing street car, turned at a street crossing to go over the track in front of that car, the negligence of the street car company was to be determined in accordance with rules of law giving both the car and the vehicle the right to use the streets and intersections, and imposing on both the reciprocal duty of the exercise of due care to avoid harm. The court said that the exercise of care on the part of the motorneer had special reference to the rate of speed at which the car was moving, his control and exercise of control over it, and his opportunity for observing that the vehicle was about to cross, including the distance from the track at which the vehicle turned and the rapidity at which it was then traveling. The court further held that the test of the care to be exercised at a street crossing was not necessarily the same as was required at a steam railway crossing, and that if a driver of a vehicle approaching a street railway track to cross it at an intersection with another street looks and listens and sees and hears no car approaching for such a distance that he could make the crossing safely, he is not guilty of contributory negligence as matter of law if while attempting to cross the tracks the car strikes and overturns the vehicle.—Bradstreet.

Digitized by Google

Branch Appellate Court, First District of Illinois.

ROBERT SMITH PARKS, APPELLANT,

v.

NORTHWESTERN UNIVERSITY.

PUBLIC CHARITY; EDUCATIONAL INSTITUTION; EXEMPT FROM DOCTRINE OF RESPONDEAT SUPERIOR.

1. A public charity is not necessarily confined to institutions or corporations which confine their gifts or assistance to the poor and needy. The term public charity has a broader significance. One of the earliest forms of public charity known to the law was that of a school and college.
2. The principle upon which public charities are held exempt from the doctrine of respondeat superior is that a public charity, whether incorporated or not, is but a trustee, and is bound to apply its funds and property in furtherance of the charity, and not otherwise. The law will not permit the trustee to divert or use the funds or property of his trust for any object not contemplated in the trust, and what the law will not permit the trustee to do it will not do itself.—Chicago Legal News.

Decided July 11, 1905.

APPEAL from Superior Court of Cook County. Affirmed.

Messrs. Ashcroft & Ashcroft for the plaintiff.

Mr. H. H. C. Miller and *Mr. C. G. Little* for the defendant.

Mr. Justice SMITH delivered the opinion of the Court:

The record in this case presents the question whether the appellee, Northwestern University, is liable to one of its students who paid to it a sum of money for his tuition, for an injury received by him while pursuing his studies in its chemical laboratory resulting from the negligence of the professor or instructor in charge, there being no allegation or charge in the declaration that the defendant was negligent in the selection or appointment of such professor or instructor.

The declaration charges the loss of an eye of the plaintiff, through the negligence of the professor, when the plaintiff was in his charge as a student, and in the class room or laboratory. A demurrer was sustained to the declaration upon the ground that the defendant is a charitable or eleemosynary institution, and for that reason was exempt from liability, although the declaration charges it was conducting a school and undertook to teach the plaintiff for hire.

The question as to whether the defense should be raised by demurrer or plea is waived by counsel for appellant in their brief, and it is agreed that the case may be considered as if the charter of the defendant was fully pleaded, and the issue of law made thereon.

The defendant is operating under a charter conferred by the legislature of this State (Private Laws of Illinois, 1851, p. 20) and amendments thereto passed in 1855, 1861, and 1867. An examination of the act of 1851 shows that the defendant holds its property of every kind solely for educational purposes. Its entire funds, whether derived from money or property given to it, or from income from such funds or properties, or from the tuition of students or other sources, must be used solely for educational purposes. The powers granted to it are for the purpose of enabling it to handle and manage its property in aid of the main purpose of its creation, which is education, and for no other object or purpose. A public charity is not necessarily confined to institutions or corporations which confine their gifts or assistance to the poor and needy. The term public charity has a broader significance. One of the earliest forms of public charity known to the law was that of a school and college. In Dexter v. Harvard College, 176 Mass. 192, the court said:

"That a gift for the promotion of education in Harvard College is a public charity, is a proposition too plain to need discussion. In St. 43 Eliz., chapter 4, section 1: 'Schools of learning, free schools, and scholars in universities, are mentioned as charitable objects. Such a public charity need have no special reference to the poor.' In American Academy v. Harvard College, 12 Gray, 582–594, Chief Justice Shaw says: 'That a gift designed to promote the public good, by the encouragement of learning, science, and useful acts, without any particular reference to the poor, is regarded as a charity, is settled by a series of judicial decisions and regarded as the settled practice of a court of equity. Such is a bequest for the improvement of a city, . . . to establish new scholarships in a college, . . . to found and endow a college.'"

The cases of Andrews v. Andrews, 110 Ill. 203–231; Female Academy v. Sullivan et al., 107 Ill. 365; Vidal v. Girard Executors, 2 How. 127; Downs v. Hospital, 101 Mich. 555; Fire Ins. Patrol v. Boyd, 120 Pa. State, 624; Currier v. Trustees Dartmouth College, 117 Fed. R. 48, hold to the same effect. Our conclusion, therefore, is that the defendant is a public charity, depending entirely upon trust funds for its support, and must be so treated and held by courts.

Counsel for appellant do not controvert the general proposition that defendant is a public charity, but they insist that it is not such a public or quasi public corporation as to entitle it to exemption from suits for damages arising from the negligence or mismanagement of its officers and agents within the scope of their duties as such; nor is it exempt from civil action on account of its negligence in not providing a safe place in its chemical laboratory in which the plaintiff could pursue his studies, or for the negligence of its vice-principals in conducting the business for which it is chartered. They urge that the doctrine which had its origin in Russell v. Men of Devon, 2 D. & East, 667, and Halliday v. St. Leonard, 11 C. B. N. S. 192, and has been generally accepted in the United States, exempting towns, counties, and all involuntary governmental organizations from liability for negligence in maintaining streets and bridges and in their municipal acts, has no application to corporations of the character of defendant, which have accepted a private charter.

We do not understand, however, that the exemption from liability contended for by appellee is based upon or springs from the principle upon which involuntary municipal corporations, such as towns, counties, school districts, etc., are exempt from liability for negligence

Digitized by Google

in their municipal acts. As stated in Elmore v. Drainage Commissioners, 135 Ill. 269: "In such organizations the duties and their correlative powers are assumed in invitum, and there is no liability to respond in damages in a civil action for neglect in the performance of duties unless such action is given by statute.

"The grounds upon which the liability of the municipal corporation proper is usually placed are, that the duty is voluntarily assumed, and is clear, specific, and complete, and that the powers and means furnished for its proper performance are ample and adequate. In such cases there is a perfect obligation and a consequent civil liability for neglect in all cases of special private damage."

If we are to apply these principles to public charities, as appellant contends, the logic would be clear, and all public charities must be held liable, for they are all voluntarily assumed and administered, and being voluntarily assumed, the liability would follow, and the funds and properties contributed to them by the donors would be in danger of being swept away and applied to objects not contemplated by the donors. But, in our opinion, these principles are not applicable to public charities.

The principle upon which public charities are held exempt from the doctrine of respondent superior is that a public charity, whether incorporated or not, is but a trustee, and is bound to apply its funds and property in furtherance of the charity, and not otherwise. The law will not permit the trustee to divert or use the funds or property of his trust for any object not contemplated in the trust, and what the law will not permit the trustee to do it will not do itself. If the doctrine of respondent superior is to be applied to a trust of the character here involved, as contended by appellant, we would have a result contrary to all reason and justice. Damage would be paid, not from the pocket of the wrongdoer, but from a trust fund, in violation of the terms and objects of the trust.

In reviewing the case of Currier v. Trustees of Dartmouth College, 117 Fed. Rep. 48, Judge Putnam, although holding that the court was not compelled to decide the question, expressed so aptly the unreasonableness of the doctrine contended for by appellant that we quote his language. He says:

"Nevertheless, there are difficulties of a serious character, as suggested by the learned judge in connection with the disposition of this case in the circuit court, which render it apparently contrary to the fundamental notions of justice to apply to institutions of the character of the defendant, the ordinary rule with regard to negligence and reasonable care to their full extent. As well suggested by him, is the institution liable for some mistake of some professor in conducting a difficult experiment in the chemical laboratory, or of an assistant to the professor, when, by the very nature of things, assistants are somewhat largely inexperienced? Does the law require that all the appurtenances of a gymnasium, attached to an educational institution, shall be regarded with the same strict rules as those of a manufacturing establishment? Our institutions of learning are commonly known as often poorly endowed and in the receipt of no profits, and at the most of only a moderate income, and often, therefore, disenabled from making use on their premises of modern appliances for safety. Are they liable to one who enjoys their beneficence, knowing that such is their frequent position, as ordinary business corporations are liable?"

In the Feoffres of Heriot's Hospital v. Ross, 12 C. & F. 506, an action was brought by Ross, a person eligible for admission to the hospital, to recover damages for the wrongful refusal of the trustees to admit him. The case was appealed to the House of Lords, where it was unanimously held that the action could not be maintained. Lord Brougham said: "The charge is that the governors of the hospital have illegally and improperly done the act in question, and therefore, because the trustees have violated the statute—therefore, what? Not that they shall themselves pay the damages, but that the trust fund which they administer shall be made answerable for their misconduct. The finding on this point is wrong, and the decree of the court below must be reversed." Lord Cottenham said: "It is obvious that it would be a direct violation, in all cases, of the purpose of a trust if this could be done, for there is not any person who ever created a trust that provided for payment out of it of damages to be recovered from those who had the management of the fund. No such provision has been made here. There is a trust, and there are persons intended to manage it for the benefit of those who are to be the objects of the charity. To give damages out of a trust fund would not be to apply it to those objects which the author of the fund had in view, but would be to divert it to a completely different purpose."

From the time of the decision in the above case down to the present, no decision in England or in this country can be found, we think, holding that an institution of learning, like the defendant, is liable under like or similar circumstances to those charged in the declaration. On the contrary, the uniform course of the decisions has been in favor of non-liability. We refer to a few of them: Riddle v. Proprietors of the Locks, 7 Mass. 187; McDonald v. Mass. Gen. Hospital, 120 Mass. 432; Sherbourne v. Yuba Co., 21 Cal. 113; Brown v. Inhabitants of Venalhaven, 65 Me. 402; Mitchell v. City of Rockland, 52 Me. 118; City of Richmond v. Long, 17 Grattan, 375; Ogg v. City of Lansing, 35 Iowa, 495; Murtaugh v. City of St. Louis, 44 Mo. 479; Patterson v. Penn. Reform School, 92 Pa. 229.

It is further urged that the plaintiff was a student for hire, and that the defendant is authorized to charge and receive tuition by its charter. Therefore, when the plaintiff was admitted as a student and paid his tuition, a contract existed between the plaintiff and defendant in which the defendant assumed precisely the obligations and incurred precisely the same liability an individual would have incurred under a like contract.

We are of the opinion that the fact that the plaintiff was required to and did pay tuition for the instruction and benefits offered by the defendant does not deprive the defendant of its eleemosynary character. The amounts thus received from plaintiff and other students are not for private gain, but contribute to the funds of

Digitized by Google

the institution and enable it more effectually to accomplish the purposes for which it was founded and organized. The fact that the defendant received from the plaintiff and other students tuition, does not make it the less a public charity, nor does it expose the trust fund to the liability of being depleted or frittered away by the negligence of its officers, professors, or employes. In case of injury the wrongdoer, not the trust fund, must respond. Gooch v. Association, 109 Mass. 558; Powers v. Mass. H. Hospital, 109 Fed. R. 294; Downs v. Hospital, 101 Mich. 555.

The judgment of the court below is correct and is affirmed.

Corporations—Trust Deeds Passing Property to Trustee in Bankruptcy—Foreclosure and Injunction.

[Central Law Journal.]

In re Jersey Island Packing Co., 138 Fed. Rep. 625, the facts were that the assets of said alleged bankrupt consist of about 4,000 acres of land described in the petition, together with the improvements, machinery, implements, and tools thereon situated, all of the value of $400,000; that on February 14, 1902, a mortgage on said property was executed to the Mercantile Trust Company, a corporation, to secure $100,000, represented by bonds of said corporation; that, as the petitioners are advised and believe, the issue of said bonds was and is illegal and void, for the reason that they were not used for purposes and objects of the company, and were issued neither for money paid, labor done, nor property actually received; that on December 11, 1902, said corporation executed to the Germanic Trust Company, afterwards known as the Central Trust Company, a conveyance and assignment of all the property of said corporation, and on April 27, 1905, said Central Trust Company transferred all of said property to William H. Wright, who in said transfer was alleged to be the owner and holder of a note for $30,000 issued by said Jersey Island Packing Company, and secured by said deeds of trust; that on September 19, 1903, there was filed for record in Contra Costa County, California, another deed of trust, executed by said corporation to William H. Wright and Myra E. Wright, to secure the payment of $100,000; that in said deeds of trust it is provided that notice of a sale thereunder shall be published in a newspaper in the city and county of San Francisco, as well as a newspaper published in the county in which the property is situated, and petitioners aver that notice has been published under said provisions, and that the time of sale under said notices is May 22, 1905; that William H. Wright is the treasurer of said Jersey Island Packing Company, and that, as petitioners are informed and believe, he has attempted to conceal from said company and others interested the intended sail of said property; that unless restrained by this court, said sale will be made on May 22, 1905, to the irreparable loss and injury of all unsecured creditors, and said trustees under said deeds of trust will be the only bidders at said sale and will bid in the property for the amount of the indebtedness mentioned therein; that, if all the property of said alleged bankrupt is disposed of as a whole in this court, it will realize sufficient to pay all its indebtedness, secured and unsecured, and that the unsecured claims aggregate about $140,000. The court said:

"It is earnestly insisted on behalf of the petitioners that the district court had no jurisdiction to make the order enjoining the sale; that the deeds of trust are absolute conveyances of the property of the alleged bankrupt, and the right of the trustees thereunder to sell upon default is not and can not be affected by the proceedings in bankruptcy. Upon the proposition that the trust deeds are absolute conveyances of the property of the alleged bankrupt, and the right of the trustees thereunder to sell upon default is not and can not be affected by the proceedings in bankruptcy. Upon the proposition that the trust deeds are absolute conveyances, the petitioners rely upon Powell v. Patison, 100 Cal. 234, 34 Pac. Rep. 676, and Moore v. Calkins, 95 Cal. 435, 30 Pac. Rep, 583, 29 Am. St. Rep. 128. The first of these cases goes no further than to recognize the established distinction between a defeasible and an absolute trust, and to say that the latter is a conveyance of property to a trustee for the purpose of selling it to pay debts, the effect of which is to pass the title unconditionally to the trustee and to vest it in him unconditionally and indefeasibly for the purposes of the trust. The second case held only that the instrument then under consideration was a trust deed; that it conveyed to the grantee, who was a creditor of the grantor, the legal title, and conferred on him the power to sell the property thus conveyed, and transmit the legal title to his grantee.

The trust deeds of the alleged bankrupt's property in this case are clearly not in the nature of an absolute conveyance. They are conveyances to secure debts of the grantor not then due. 'Like the mortgage at common law, the trust deed passes the legal title to the grantee in those jurisdictions where a mortgage passes such interest, and leaves in the grantor the equity of redemption only. Likewise in those States where it is held that the legal title remains in the mortgagor the same rule is generally applied in favor of the grantor in a trust deed.' 28 Am. & Eng. Enc. of Law. (2d ed.), 753. The grantor of these trust deeds undoubtedly retained an interest in the property conveyed, which in bankruptcy would pass to its trustee for the benefit of its unsecured creditors. In re Union Trust Company, 122 Fed. Rep. 937, 59 C. C. A. 461. The filing of a petition in bankruptcy is in substance and effect an attachment and an injunction, and it places the property of the bankrupt constructively in the custody of the court of bankruptcy. Loveland on Bankruptcy, sec. 150; In re Weinger, Bergman & Co. (D. C.), 126 Fed. Rep. 875.

Property on which there is a mortgage or other lien passes to the trustee in bankruptcy, and is therefore in the custody of the court of bankruptcy. In re Rochford, 124 Fed. Rep. 182, 59 C. C. A. 388; In re Kellogg, 121 Fed. Rep. 333, 57 C. C. A. 547; Chauncey v. Dyke Bros., 119 Fed. Rep. 1, 55 C. C. A. 579; In re Booth (D. C.), 96 Fed. Rep. 943. And the beneficial interest of a bankrupt in property held in trust passes, also, in all cases where that interest

Digitized by Google

might have been transferred to another by the bankrupt, or might have been levied upon under judicial proceedings against him. Stanford v. Lackland, 2 Dill. 6, Fed. Cas. No. 12,312; Spindle v. Shreve, 111 U. S. 542, 4 Sup. Ct. Rep. 522, 28 L. Ed. 512. The trustee in bankruptcy has the election to refuse to take possession of mortgaged property, if its value, over and above the incumbrance, is not sufficient to justify an attempt to administer it. It is true that the bankruptcy act provides that liens such as the lienholders had under the trust deeds in this case shall not be affected by bankruptcy, but that is far from saying that such lienholders may, after the commencement of proceedings in bankruptcy against the debtor, proceed to enforce their liens or contracts in the manner prescribed in the instruments which create them; and this is true whether such lien is an ordinary mortgage, or a deed of trust with provision for a strict foreclosure by a notice and sale.

The provision of the bankruptcy act that such a lien shall not be affected by the bankruptcy proceedings has reference only to the validity of the lienholder's contract. It does not have reference to his remedy to enforce his right. The remedy may be altered without impairing the obligation of his contract, so long as an equally efficient and adequate remedy is substituted. Every one who takes a mortgage or deed of trust intended as a mortgage, takes it subject to the contingency that proceedings in bankruptcy against his mortgagor may deprive him of the specific remedy which is provided for in his contract.

In the present case there was no jurisdiction over the property of the bankrupt in any other court. The only jurisdiction was in the court of bankruptcy. The interest of the bankrupt in the mortgaged property will pass to the trustee when he is appointed, and in the meantime it is under the protection of the bankruptcy court.

The petitioners also cite In re Browne (D. C.), 104 Fed. Rep. 762. In that case McPherson, district judge, while declining to pass on the question whether the court had jurisdiction to interfere and prevent a fraudulent or oppressive exercise of the right of sale of personal property which had been pledged by the bankrupt more than four months prior to bankruptcy, in a case where it had been agreed that the creditors intended to deal fairly with the property pledged, and to make an honest offer to sell for the best prices that could be obtained, was of the opinion that the bankruptcy act gave the court no authority to interfere between the creditors and the exercise of their right to sell given them by the collateral notes.

It may be remarked in this connection that the interest of a pledgee differs from that of a mortgagee. The pledgee has a special property in the thing pledged, which entitles him to the possession, to protect which he may maintain detinue, replevin, or trover, and the interest of the pledgor is not subject to execution. The decision in re Browne may be accepted as authority for the proposition that a district court will not interfere with a sale by a pledgee of the thing pledged, under the power of sale given by the terms of his contract, when there is no claim that such power is exercised in a fraudulent or oppressive manner.

The bankruptcy act provides (act July 1, 1898, ch. 541, sec. 2, cl. 15, 30 Stat. 545 [U. S. Comp. St., 1901, p. 3421]) that courts of bankruptcy shall have power to make such orders, issue such process and enter such judgment, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. Under this provision the court may, upon proper application and cause shown, restrain not only the debtor, but any other party, from making any transfer or disposition of any part of the debtor's property or from any interference therewith. Beach v. Macon Grocery Co., 116 Fed. Rep. 143, 53 C. C. A. 463.

We are of the opinion that the district court had jurisdiction to make the restraining order. Of the propriety of that order, assuming that the court had the power to make it, there can be no question. All the property of the alleged bankrupt was about to be sold, at the instance of its treasurer, to obtain satisfaction of debts owing to him and his wife, secured by the trust deeds. These facts evidently came to the knowledge of unsecured creditors but a few days before the proposed sale. They had no time in which to bring the creditors together, or to secure bidders for the property, or otherwise to protect their interests. The sale of the property under the trust deeds would have extinguished the equity of redemption. By selling the property under the direction of the bankruptcy court, the interests of all parties may be protected, and the trustees of the trust deeds will not be injured. They will be entitled to the proceeds of the sale to the same extent that they would have been if they had themselves made the sale under the power of sale given them by the trust deeds.

Note.—Like the mortgage at common law, the trust deed passes the legal title to the grantee in those jurisdictions where a mortgage passes such interest, and leaves in the grantor the equity of redemption. It has been judicially determined that a trust deed passes the title to the grantee in the following cases: Newman v. Jackson, 12 Wheat. (U. S.) 570; Stevens v. Clay, 17 Colo. 489, 31 Am. St. Rep. 328; Sargent v. How, 21 Ill. 148; Thornhill v. Gilmer, 4 Smead. & M. (Miss.) 153; Brown v. Doe, 10 Smead. & M. (Miss.) 268; Anderson v. Holman, 1 Jones L. (46 N. Car.) 169; Taylor v. King, 6 Munf. (Va.) 358, 8 Am. Dec. 746. And in the following cases the title was held to be in the grantor: Norman v. Samuels, 17 Iowa, 528; Lenox v. Reed, 12 Kan. 223; Webb v. Haselton, 4 Neb. 308, 19 Am. Rep. 638; Hurley v. Estess, 6 Neb. 386; Kemp v. Small, 32 Neb. 318; Cullen v. Casey (Neb.), 95 N. W. Rep. 605; Hoffman v. McKall, 5 Ohio St. 124; Brown v. Drakes, 4 Hawks (11 N. Car.), 342, 64 Am. Dec. 637; McLean v. Paschal, 47 Tex. 365.

A creditor of one who sells his stock of goods in bulk without complying with the provisions of the statute regulating such sales, is held, in Rothchild Bros. v. Trewella (Wash.), 68 L. R. A. 281, to have no right to maintain a direct action against the vendee to recover the amount of his claim.

Digitized by Google

Boarding House Keepers and Stolen Property.

[London Law Journal.]

Unlike an innkeeper, the proprietor of a boarding house is not an insurer of his guest's property. Of course, it does not follow that he is under no liability whatever in case of its loss, and the extent of his liability is the question which was litigated in Scarborough v. Cosgrove. In that case the guest sought to recover from the boarding-house keeper the value of some jewelry stolen from her room by another guest, and alleged negligence on the defendant's part (1) in accepting the thief as a boarder without a reference; (2) in not supplying keys to enable her to lock up her room and the chest of drawers in which the jewelry was kept. There are two fairly modern cases on the liability of a lodging-house keeper for the theft of a guest's property. In the earlier one (Dansey v. Richardson, 23 Law J. Rep. Q. B. 361: 3 E. & B. 144), the complaint was that the theft was brought about by the negligence of a servant who left the front door open, and thus enabled the thief to enter, and the judges in the Court of King's Bench were equally divided. Two of them held that the defendant could only be liable if she had personally failed to take such care of her house as a prudent housekeeper would take for the purpose of protecting his own goods. The other two considered that she was liable for the negligence of the servant, the result being that the defendant retained a verdict in her favor. In the latter case (Holder v. Soulby, 29 Law J. Rep. C. P. 246: 8 C. B. (N. S.) 254), the Court of Common Pleas held unanimously that there was no bailment of the guest's goods and no duty on the part of the lodging-house keeper to take care of them, and that he was only liable for his own misfeasance. In this state of the authorities, it seems to us that Mr. Justice Darling was bound to follow the unanimous decision of the Court of Common Pleas and to hold, as he did, that there was no case to go to the jury. The Court of Appeal, however, were in a position to review the authorities, and they have held that a boarding-house keeper is under a duty to take reasonable care of the guest's goods, and that there was a case for the jury on the question whether he had taken such care. Accordingly they ordered a new trial.

Title to Aerolite.

[New York Law Journal.]

The case of Goodard v. Winchell in the Supreme Court of Iowa, 86 Iowa, 71, attracted a great deal of attention when it was decided. It appeared that a person saw an aerolite fall on the land of another where it buried itself in the ground, becoming imbedded therein. On the following day he dug it up and removed it, claiming ownership as a finder. It was, however, very properly held that the meteorite belonged to the person upon whose land it fell, as it was an accretion to the soil from natural sources. The same principle has been recently applied by the Supreme Court of Oregon in Oregon Iron Company v. Hughes, 81 Pac. 572. It was held that a meteorite or aerolite, though not buried in the earth, is nevertheless real estate, belonging to the owner of the land, and not personal property, in the absence of proof of severance.

It was expressly decided that mere evidence of a tradition that Indians reverenced a meteorite, washed their faces in the water contained therein, and treated it as a kind of magic or medicine rock belonging to the medicine men of the tribe, and that there were fantastic potholes therein, thought to have been made by the Indians, was insufficient to justify an inference that they had severed the meteorite from the realty, and thereafter abandoned it, entitling defendant thereto, as the next finder.

As to the evidence relied on to show a severance from the soil and abandonment of the meteorite the court said:

"In substantiation of this defense Susap, a Klickitat Indian, 70 years of age, and about the last of his tribe, was called, who testified that when he was a young boy he used to go hunting with Wachino, a Clackamas chief; that he often saw the meteorite, and that there were lots of trees around it then. The stumps, as the evidence shows, are there at the present time, measuring from three to seven feet over, and some of them are very near to where it lay. Continuing, he says the old chief told him and the other Indians that the object in question was iron; that it had a hole in it; that when it rained the water fell in there, and that the Indians went there and washed their faces in the water, and put their bows and arrows in it that they used in time of war; that the medicine men said it came from the moon, and that the Indians called it 'Tomanowos.'

"Sol. Clark, 47 years of age, whose mother was of the Wasco tribe of Indians, was also called, who testified that his mother told him that there was a place up there where the Indians used to go to this Tomanowos; that they used to send their young people out there—generally made them go on dark nights—and that the Tomanowos was a kind of bowl or rock that had some holes in it, and, on cross-examination, that the Clackamas Indians used the rock; that it was a kind of magic or medicine rock, and belonged to the medicine men of the tribe, but that witness claimed no interest in it. This constitutes, in substance, all the testimony bearing upon the subject. Now, it is argued with much zeal that it is inferable from this testimony that the meteorite is an Indian relic; that it was an object of worship—a 'Tomanowos,' whatever that term implies; that the Indians must have at some time dug it from beneath the earth, where it naturally would have buried itself by impact from its fall; that they must have removed and erected it to a standing position at the place where found, and carved out the interior into 'those fantastic pot holes,' and that they maintained it there, and venerated and used it in their warfare, and thereby they severed it from the soil and appropriated it to their own use, rendering it personal property in their hands; that presumably they forsook and discarded it, and that it became abandoned property, and as such the property of the finder.

"But what is there to show that the Indians dug it from the earth and erected it in place, except its posture, or that they carved out the holes in its crown, except that they are there?

Digitized by Google

No witness said that they did this, and what has been related concerning their use of the object is traditional. Such evidence is very meagre from which to infer the substantial facts involved for the predication of the defense relied upon. Nature does many fantastic things, and presumably these are the result of natural causes, and the cavities contained therein are attributable to the same agency. As against this presumption there could be no rational inference that the Indians dug it from beneath the surface of the earth and removed and erected it in the position in which it was found in the dense forests, where it must have lain for some time, considering its great weight. Nor that they hollowed out the potholes in its crown, considering the almost impenetrability of the substance, and the primitive tools and implements with which they had to do their work.

"So that, conceding that it was an object susceptible of Indian worship, the fact does not afford reasonable inference that it was severed from the soil and appropriated by them. They may have worshiped and utilized it, dipping their bows and arrows and laving their faces in the water accumulating in these bowls, but all this they could well have done without an appropriation, as tradition tells us they worshiped Mt. Hood and other immovable objects as they existed in a state of nature, and there could have been no severance or appropriation by such use. So we conclude in this case that there was not sufficient evidence even to go to the jury, from which they would be permitted to infer that this was once Indian property, which they later abandoned, or that it is an Indian relic, and hence that the finder is not entitled to the ownership.

"Nor is this case ruled by Ferguson v. Ray, 44 Or. 557, 77 Pac. 600, 102 Am. St. Rep. 648, for in that case there was unmistakable evidence, not mere conjecture, that the quartz, the subject of the action, had been removed from its natural deposit by the hand of someone and reduced to possession by severance from the realty, and was again deposited where found, but here there is no evidence, pertinent, from which it may be deduced that there had been a severance and appropriation by the Indians."

A Contribution to the Microscopic Study of Pen and Ink Lines.

By Dr. Marshall D. Ewell, 59 Clark Street, Chicago, Ill.

[Read at meeting of the American Microscopical Society, July 5, 1905.]

In the third edition of a work entitled "Bibliotics, or the Study of Documents," etc., by Dr. Persifor Frazer, the learned author has devoted an entire chapter (X) to the study of so-called serrations in ink and lead pencil lines and has attempted to show that by means of these serrations the authorship of a disputed writing may be determined. The author in the chapter mentioned calls these serrations "provisionally variations of nerve force," and states that "the fact of the existence of these peculiarities is unquestioned, and the value of the observations where proofs of identity or non-identity are sought is unquestionable." For a full presentation of the author's views reference is made to chapter 10 of said work, where a clear presentation of the theory profusely illustrated will be found.

The fact that the views of the author have, without, as it seems, any independent investigation, received a quasi indorsement from Drs. Wood, Mitchell, and Witmer, as appears from their letters published in the preface and body of said work, and also in the recent work (1905) of Winslow on "Applied Microscopy," page 139, together with the further fact that Dr. Frazer has in at least one case* attempted by this method to establish the authorship of a disputed writing, demands a careful investigation of the theory before it is allowed any weight in jeopardizing human life or liberty.

That numerous irregularities in the contour of lines traced on paper by a pen or pencil exist will not be denied. The grosser ones are apparent to the naked eye, and may be due to inexperience of the writer or to an unstable condition of his nervous system, however caused.

A microscopic examination of ink and pencil lines will also disclose the existence of more minute irregularities or "serrations," if one prefers that term; but that they have any significance or weight whatever in determining the authorship of a disputed writing is denied.

In order to settle this question the writer made a series of observations early in the present year which seem to him to bear directly upon this question and to show that the claim has no reasonable grounds to warrant its acceptance. The process of exclusion of the various factors involved was the method of research adopted. Granted the existence of the so-called serrations, what is their cause? That they have in written characters any regularity of sequence, is denied, and in the writer's judgment such regularity is not capable of proof.

In the use of a diamond tool in ruling micrometers on glass or metal, or in turning metal in a lathe with a metal tool, if the tool is not properly held or ground, it frequently happens that it will shatter and produce regular serrations upon the glass or metal surface upon which the work is performed. These serrations may have rounded extremities or may be sharp and regular like saw teeth; or the surface may be irregularly cut or torn. Let any one who is the possessor of an Abbe test-plate examine it and he will have a good example.

A microscopial examination of the engine-ruled lines on writing paper will also disclose these so-called serrations in great numbers.

In the investigation of the question the writer first ruled lines on paper with a pen and ink by means of a dividing engine, drawing the ruling carriage by a string in order to cut off any personal nervous influence. The lines so drawn uniformly exhibited serrations. The writer had years previously ruled lines on glass and through metal films on glass, and knew from experience thus gained that serrations might be produced by a ruling tool improperly mounted; but that if the tool was properly held, a line could be produced that showed not the slightest

*The State of New York v. Kennedy, tried in the city of New York in 1901.

Digitized by Google

irregularity of contour under a power of 1,500 diameters.

The next step in the investigation was to write with a pen not charged with ink on a thin film on glass in the same manner that ordinary writing is produced, the only difference being that the lines are not produced on paper by ink. Some experiments were necessary in order to produce a film that would exactly record the movements of the pen perpendicularly to and across the surface operated upon. Plate glass was held over a smoky flame, and a very thin film of carbon thereby deposited upon its surface. This made a very good medium for recording the action of the pen. The film must, however, be very thin, as otherwise the carbon will gather on the point of the pen and the accumulation will be deposited irregularly along the edges of the line much as a snow plough deposits the snow along the sides of the track, the difference being principally one of degree.

Another film was produced by flowing the glass with a thin solution of wax and asphaltum in bensole. If too thick a film is used the same phenemenon of the deposition of the substance of the film along the edges of the line will be manifested. Satisfactory films having finally been made thin enough to record the pen movements, they were written upon by various persons under the writer's direction with an ordinary dry steel pen, held and operated in the usual manner, and in every instance the margins of the lines under a power of over 120 diameters were absolutely clear, sharp, and free from serrations of any sort. The ordinary writing of the same persons on paper with pen and ink had previously shown abundant serrations.

A microscopic examination of ordinary writing paper will uniformly show irregularities of surface consisting of furrows, pits, and elevations. This fact was ascertained by a microscopical examination of the surface of the paper held at right angles to the optic axis of the microscope and from the examination of sections of the paper, the surface being parallel to said optic axis. These pits, furrows, and elevations afford an ample reason for the existence of the serrations in question, and the experiments above recorded show that they are not due to variations in the nerve force of the writer, but to irregularities in the surface of the paper itself.

The Ironies of Lord Justice Knight-Bruce.

[London Law Journal.]

Sir Frederick Pollock, in his preface to the new volume of the Revised Reports, culls some fresh flowers of rhetoric from Lord Justice Knight-Bruce's judgments. Here are his comments in a specific performance suit: "That year rolled on and ended; another spring came and still the purchase was, without any fault on the defendant's part, not completed and still the contract was alive. Matters, however, had by little and little so far advanced in the course of the fourteen or fifteen months which had passed since 1844, that there were indications promising him peace and speedy payment: Nescius aurce fallacis. Towards the close of March, 1846, there arose a cloud out of Lincoln's Inn like a man's hand. A letter from the defendant's solicitor to the plaintiff's solicitor was thus," and so on. Or hear him again on exoneration of personalty: "The reported cases more or less directly in point which have been decided within the last hundred and fifty years would, if extracted from the many volumes containing them, and collected, form, I do not say a great evil, but a good book." The following, apropos of privilege for professional communications, is not new, but it is worth resuscitating: "Truth, like other things, may be loved unwisely, may be pursued too keenly, may cost too much. And surely the meanness and mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, and suspicion and fear into those communications which must take place and which, unless in a condition of perfect security must take place uselessly or worse, are too great a price to pay for truth itself." What agreeable reading the law reports would be if more judgments were conceived in this vein!

Conversion of Household Goods—Measure of Damages.

In Barker v. S. A. Lewis Storage & Transfer Co., decided by the Supreme Court of Errors of Connecticut in July, 1905 (61 Atl. 363), it was held that the measure of damages for the conversion of household goods is not restricted to the price which could be realized by a sale in the market, but is the value to the owner, based on his actual money loss resulting from his being deprived of his property, excluding any sentimental value placed thereon. The court said in part:

The defendant claimed that the measure of the plaintiffs' recovery for these articles was their fair market value at the time and place of conversion, with lawful interest since that date. It asked the court to so charge, and sought by the introduction of evidence to show that there was a second-hand market for such things in New Haven, and presumably, although no definite offer was made, to follow up that line of inquiry by offering evidence of some sort claimed to show the value of articles of the kind in question in such market. The court was correct in refusing to instruct the jury as requested, and in excluding said testimony.

The cardinal rule is that a person injured shall receive fair compensation for his loss or injury, and no more. Baldwin v. Porter, 12 Conn. 473. Commonly in cases of conversion the loss is the value of the property. Baldwin v. Porter, supra. Commonly the value of the property, as representing the owner's loss, is its market value, if it have one, since thereby is indicated the cost of replacing. Hence the subordinate rule of general application appealed to by the defendant. But the principal rule, which seeks to to give fair compensation for the loss, is the paramount one, and ordinarily, when the subordinate one fails to accomplish the desired result it yields to an exception or modification. Sutherland on Damages, sec. 12. It is now generally recognized that wearing apparel in use, and household goods and effects owned and kept for personal use, are articles which can not in any fair sense be said to be marketable

Digitized by Google

and have a market value, or at least a market value which is fairly indicative of their real value to their owner, and of his loss by being deprived of them. So it has been frequently, and we think correctly, held that the amount of his recovery in the event of conversion ought not to be restricted to the price which could be realized by a sale in the market, but he should be allowed to recover the value to him based on his actual money loss, all the circumstances and conditions considered, resulting from his being deprived of the property, not including, however, any sentimental or fanciful value he may for any reason place upon it. Denver, etc., R. Co., v. Frame, 6 Colo. 385; McMahon v. City of Dubuque, 107 Iowa, 62: 77 N. W. 517: 70 Am. St. Rep. 143; Int. Ry. v. Nicholson, 61 Tex. 553; Fairfax v. N. Y. C. and H. R. R. R., 73 N. Y. 167: 29 Am. Rep. 119; Sell v. Ward, 81 Ill. App. 675; Joyce on Damages, sec. 1037; Sutherland on Damages, sec. 1117; Sedgwick on Damages, sec. 251.

Dying Declarations.

In State v. Craig, decided by the Supreme Court of Missouri, Division No. 2, in July, 1905 (88 S. W. 641), it was held that though deceased, when advised of a change for the worse, said that he did not feel any worse, and that he could not afford to die, his statement thereupon made in connection with a declaration that he believed that he was about to die, and that he had been told by the doctors he was about to die, and made the same as his dying statement, was admissible in evidence, it appearing that he had confidence in his physician, and the circumstances tending to show that his opinions as to his recovery had undergone a change, and his death having occurred within three hours after the statement was made. The court said in part:

The principal question in this case, and one upon which the defendant chiefly relies for reversal of the judgment, is the act of the court in admitting in evidence a paper writing as the dying declaration of the deceased, which defendant contends was error. It has always been ruled in this State that, in order to justify the admission of dying declarations, the impression of impending and immediate death and absence of any hope of recovery is essential to the admission of such declaration.

The evidence in this case discloses that the deceased had been fatally stabbed; that he seemed to improve in the first instance, from the time the stabbing occurred until the morning of the 16th day of November; that about 7 or 8 o'clock in the morning of said day there began a change for the worse in his condition, and that his physician arrived about 9 o'clock, noticed the change in the condition of the deceased and advised him of that fact. He answered the doctor, saying he did not feel any worse. The doctor said: "Walter, you are a very sick man, and the chances are all against your getting well. You are sinking now." Testifying further the doctor said: "He looked at me and said: 'Doctor, am I going to die?' I said: 'Walter, I don't believe you can possibly get well.' He said: 'I can't afford to die.'" Witness Motter testified that he (the deceased) said at the same time: "Well, I will be ready for the big show." Said witness also testified that the lips of the deceased were then blue; that his breast was rising and falling; that he was gasping for breath, and that he died within two hours thereafter. Deceased declared in the statement itself, which the evidence shows was written down as he made it in answer to questions asked, that he believed he was about to die; that the doctor told him he was about to die, and that he made that as his dying statement. This was read over to him and he signed it.

It is true that when the doctor told him he could not get well he said he could not afford to die, which would seem to indicate that he had not then abandoned all hope of recovery, but that he came to a different conclusion and believed that his end was near at hand is clearly indicated by the statement itself, in which he says: "Believing I am about to die, make this statement at 10.55 a. m., this 16th day of November, 1902." He died about 1.20 p. m. the same day. While deceased said nothing as to when he expected to die, the question was not asked him, nor was it necessary for the admission of the declaration in evidence that he should have made a formal statement that he was without hope of recovery, but "it is not enough that the declarant should have thought that he should ultimately never recover. The declaration should be made under an impression of almost immediate dissolution" (State v. Johnson, 118 Mo. 491, 24 S. W. 229, 40 Am. St. Rep. 405, and authorities cited; State v. Nocton, 121 Mo. 537, 26 S. W. 551), in so far as the evidence preliminary to the introduction of the dying declaration of the deceased in that case was concerned, was much the same as in the case at bar, and it was held admissible. In that case there is quoted, with approval from 1 Greenleaf on Evidence (14th ed. sec. 158) the following:

"It is essential to the admissibility of these declarations, and it is a preliminary fact to be proved by the party offering them in evidence, that they were made under a sense of impending death, but it is not necessary that they should be stated at the time to be so made. It is enough if it satisfactorily appears in any mode that they were made under that sanction, whether it be directly proved by the express language of the declarant or be inferred from his evident danger, or the opinion of the medical or other attendants, stated to him, or from his conduct, or other circumstances of the case, all of which are resorted to in order to ascertain the state of the declarant's mind. The length of time which elapsed between the declaration and the death of the declarent furnishes no rule for the admission or rejection of the evidence, though, in the absence of better testimony, it may serve as one of the exponents of the deceased's belief that his dissolution was or was not impending. It is the impression of almost immediate dissolution, and not the rapid succession of death, in point of fact, that renders the testimony admissible." 3 Russell on Crimes, 9 Am. ed., *250; 6 Am. & Eng. Encyclopædia of Law, p. 108 et seq., and cases cited.

In the recent case of State v. Brown (not yet officially reported, 87 S. W. 519) the same sub-

Digitized by Google

ject was again under consideration, and the Nocton case was followed with approval. While deceased's remark that he did not feel any worse, in reply to his attending physician's statement that the chances for his recovery were all against him, and that he was then sinking, would seem to indicate that he was somewhat surprised, and this, together with his further remark that he could not afford to die, after being told by the physician that he could not possibly get well, tend to show that he was not then apprehensive of immediate dissolution, it is also shown by the evidence that, when informed that he could not get well, he said, "I will be ready for the big show," and that his lips were then blue, his breast rising and falling, and that he was gasping for breath; that he then made the statement itself, which the evidence shows was written down as he made it in answer to questions asked, and read over to and signed by him, in which statement he said he believed he was about to die; that the doctors told him he was about to die, and that he made it as his dying statement; that he died within less than three hours thereafter—all of which tends strongly to show that at the time of making the declaration his feelings and opinions respecting his recovery had undergone a change, in consequence, in all probability, of the statement of his physician, in whom he had confidence, that he could not possibly get well and was then sinking, and that the declaration was made under a sense of impending dissolution. There was no error committed in admitting the declaration in evidence.

Uniform Divorce Law.

[New York Law Journal.]

Governor Pennypacker, of Pennsylvania, has suggested to the governors of the States of the Union to send delegates to a national congress to draft uniform divorce legislation to be presented in all the legislatures. It has been reported that a large majority of the governors have expressed themselves as willing to aid in pushing the scheme of cooperative legislation to a successful issue. While we are prepared to afford any assistance within our power, it seems not improper to recall certain considerations which have always seemed to point to amendment of the Federal Constitution as the more feasible scheme for obviating the conflict of divorce laws.

We are not unmindful of the inveterate tendency to resort to Federal legislation although there be no legitimate grounds therefor. The suggestion by many persons under the spur of notorious recent events for Federal legislation regulating life insurance is a good illustration. The subject of marriage and divorce, however, stands on a different basis. It concerns not only interstate property rights, but the national status of men and women and the legitimacy of children. It would therefore appear to offer a peculiarly proper field for the exercise of national control—one fully as proper theoretically as the regulation of interstate commerce or of bankruptcy.

On the score of practical feasibility we believe that the scheme of constitutional amendment and Federal legislation thereunder is to be preferred to that of co-operative State legislation. In order that co-operative legislation may accomplish the result in view it is necessary that all, or practically all, of the States join in and effectuate the movement. If one-quarter of the States hold aloof the present condition of affairs will contiuue. In say three-quarters of the States there is at present a substantial concurrence of sentiment as to the proper grounds for divorce, as evidenced by their respective statutory provisions. The real difficulty is to bring the other quarter of the States into line. When it comes to the adoption of a uniform statute there will be encountered not only ordinary inertia, but also decided opposition upon conscientious and religious grounds. Mere inertia has prevented unanimous adoption of the Negotiable Instruments Law, although so far as we know there has been little if any actual opposition to its policy. What is the chance of carrying through a co-operative statute of marriage and divorce when not only ordinary indifference to reform will be met with, but positive hostility founded upon the decided scruples of very many persons?

All that would be required for Federal legislation would be the adoption by three-quarters of the legislatures of an amendment in general terms authorizing Congress to take action. Under this scheme the opposition of one-quarter of the States could be disregarded, and, moreover, because of the general terms in which the amendment would be couched opposition to possible particular provisions would not be aroused.

We wish, however, to repeat that we will do everything in our power towards promoting the plans of Governor Pennypacker, believing that any discussion of the present condition of matrimonial relations must tend towards promoting a general demand for reform, and also realizing that the State of New York is one of the hardest fields in which the advocates of reform will have to labor. If the present movement for co-operative legislation fails the agitation will probably make it easier ultimately to secure the adoption of an amendment to the Federal Constitution.

Carriers—Contributory Negligence—Jumping from Train.

In Staines v. Central R. R. of N. J., decided by the Court of Errors and Appeals of New Jersey in June, 1905 (61 Atl. 384), it appeared that a passenger in the act of alighting from a railway car was told by the conductor to jump, as the train was in motion. The train was not in motion, as the passenger could readily have ascertained. She became excited, jumped, and was injured. It was held that it was a question for the jury whether the passenger had contributed to her injury by her own negligence. The following is from the opinion:

It has been held in somewhat similar cases that it is not necessarily negligent for the passenger to jump even from a moving trian. Filer v. N. Y. Central R. R., 49 N. Y. 48, 10 Am. Rep. 327; Lewis v. Del. & Hudson Canal Co., 145 N. Y. 508, 40 N. E. 248. "No reasonable man," says a text-book of recognized authority, "would hesitate to risk a moderate leap rather

Digitized by Google

than be carried miles away from home." Shearman & Redfield, 5th ed. 519. The case is still stronger in favor of a passenger jumping from a train standing still, as in this case. It may possibly have been negligent for a woman of the age and weight of the plaintiff to jump, but the case is not so clear that a jury might not lawfully find to the contrary.

In this case, too, the plaintiff was very much excited by the alarm given by the conductor. We can not say that the language of the conductor under the circumstances of this case was not likely to produce such an alarm in the plaintiff's mind as to deprive her for the moment of self-control, and thus bring the case within the rule established in this court by Tuttle v. Atlantic City R. R., 66 N. J. Law 327, 49 Atl. 450, 54 L. R. A. 582, 88 Am. St. Rep. 491. It is true that there was no actual peril of injury to life or limb if she had waited. The peril presented to her mind was that of being carried beyond her station, and, although she could have ascertained that the train was not actually moving at the moment, she would naturally, and almost unavoidably, infer from the conductor's language that the train was on the point of moving, and that the danger of being carried beyond her station was imminent. We think it is a question for a jury whether the conductor's language was such as naturally to deprive her of the power of judgment and self-control. If it was she is not, as a matter of law, chargeable with contributory negligence, even though the peril present to her mind was not a peril to life or limb, but only the danger of being carried beyond her destination.

Sentimental Damages.

An action recently tried in the city of London court furnished an example of those breaches of contract for which it is difficult to assess compensation in money, though they have undoubtedly been attended by annoyance and inconvenience. The action was against the well-known tourist agents, Messrs. Thomas Cook & Co. The plaintiff had bought from them a return ticket from London via the United States to Japan. Coupons were attached to the tickets, which were exchanged at the different termini for steamer or railway tickets. On the return journey, he handed all his baggage at San Francisco to one of the defendants' servants, for them to place on board the steamer at New York in his own particular stateroom. He paid the defendants for that service, and they assured him on his arrival in New York some days later that his baggage was on board, and that it would be handed to him as soon as the steamer was under way.

When the steamer started, he found that his baggage was not on board, and he had to cross the Atlantic with nothing but a tooth brush and a sponge. He could scarcely present himself at the dinner table, and had to borrow a collar of the purser. He recovered his baggage after his arrival in Liverpool, and the damages for which he brought his action were the price of clothes he had to buy in Liverpool. There could be no difficulty about this head of damages, but let us suppose that the plaintiff had found his luggage immediately on his arrival at Liverpool and that it had been unnecessary to buy clothing to replace that which had been mislaid. Could the annoyance which the plaintiff suffered during the voyage be the ground of a claim for substantial damages? Many persons who have left London by railway for a visit to friends during the Christmas holidays have found at the end of their journey that their luggage had not been placed in the van, and have, in consequence, been exposed to so much discomfort that it has seriously interfered with the pleasure of their visit. But could they claim substantial damages for the breach by the company of their contract? Could the discomfort be measured in money?

We remember to have heard of a case where the wine for a splendid banquet in the country had been purchased in London and had been dispatched by railway. It did not arrive in time, and the depression of the guests can readily be imagined. But Englishmen who hold that alcohol in any form is a poison would say that, though there might be a breach of contract, there was no real damage, and in any case it is difficult to ascertain the principle on which damages could be assessed. Does the rule de minimis non curat lex apply to such cases? Are there to be no damages for mere vexation and disappointment? We can not find that there is much authority on the subject. The reason may be that the claim would usually be a modest one, and would therefore not be investigated in the superior courts. And in many cases where the breach of contract could not be disputed the party in default might think it expedient, without admitting liability, to offer some solatium for the annoyance which had been sustained.—Solicitor's Law Journal.

That an employer can not be relieved from the consequences of his neglect in providing unfit material for the construction of a staging, which results in the death of his employee, by the fact that the staging was constructed by another employee who had the power to reject material not fit for the purpose to which it was applied, is held in Farrell v. Eastern Machinery Co. (Conn.), 68 L. R. A. 239.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

Digitized by Google

GEORGETOWN UNIVERSITY

(FOUNDED 1789.)

SCHOOL OF LAW.

FACULTY.

REV. DAVID H. BUEL, S. J.,
President of the University.
HON. HARRY M. CLABAUGH, LL. D.,
(Chief Justice, Supreme Court, District of Columbia)
Dean of the Faculty and Lecturer on Common Law Pleading and Practice, and Equity Pleading and Practice.
GEORGE E. HAMILTON, LL. D.,
Lecturer on the Law of Wills.
HON. SETH SHEPARD, LL. D.,
(Chief Justice of the Court of Appeals of the District of Columbia)
Lecturer on Constitutional Law, the Law of Corporations, and Equity Jurisprudence.
HON. ASHLEY M. GOULD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Contracts, Criminal Law, and Domestic Relations.
HON. DANIEL THEW WRIGHT,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Insurance.
HON. WENDELL PHILLIPS STAFFORD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Agency.
CHAS. A. DOUGLASS, A. B., LL. B.,
Lecturer on the Law of Torts, Negotiable Paper, and Elementary Law.
MICHAEL J. COLBEBT, A. M., LL. M.,
Lecturer on the Law of Personal Property and Partnership.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
Lecturer on the Law of Real Estate and the Law of Evidence.

Judge of the Circuit Court: DANIEL W. O'DONOGHUE, A. M., Ph. D., LL. M.
Court of Appeals: HON. JOB BARNARD and MESSRS. LEIGH ROBINSON and J. HOLDSWORTH GORDON.
Quiz Masters: CLARENCE R. WILSON, A. B., LL. M.; DANIEL W. O'DONOGHUE, A. M., PH. D., LL. M., and JAMES S. EASBY-SMITH, A. M., LL. M.
SAMUEL M. YEATMAN, A. M.,
Secretary and Treasurer.
FRANK E. CUNNINGHAM,
Assistant Secretary.

ADDITIONAL LECTURERS IN THE FOURTH YEAR OR POST-GRADUATE COURSE.

HON. HOLMES CONRAD,
(Late Solicitor-General of the United States)
On the History of the Development of Law and Comparative Jurisprudence, and on the History of the English Law.
HON. SETH SHEPARD, LL. D.,
(Chief Justice Court of Appeals of the District of Columbia)
On the History of Constitutional Law and the Foundations of Civil Liberty.
REV. RENE HOLAIND, S. J.,
On Natural Law and Canon Law.
MONROE SMITH, LL. D.,
(Professor in the School of Political Science of Columbia University, New York City)
On Civil Law.
HON. LOUIS E. McCOMAS, LL. D.,
(Associate Justice of the Court of Appeals of the District of Columbia)
On International Law and Foreign Relations of the United States.
RALEIGH C. MINOR, LL. D.,
(Professor of Law in the University of Virginia)
On the Conflict of Laws.
HON. JOHN W. YERKES, LL. D.,
On Railroad Accident Law, Municipal Corporations.
J. NOTA McGILL, LL. M.,
On Patent Law.
ALDIS B. BROWNE, LL. B.,
On Jurisdiction and Practice of United States Courts.
WILLIAM C. WOODWARD, M. D., LL. M.,
On Medical Jurisprudence.
GEORGE E. HAMILTON, LL. D.,
On Legal Ethics.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
On General Practice and Exercises in Pleading and Evidence.

The thirty-sixth annual session opens on Wednesday, October 4, 1905, at 6.30 p. m., in the Law School Building, Nos. 506 and 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

The Secretary will be at his office in the Law Building daily from 4.30 to 6.00 p. m. for information, enrollment, payment of fees, etc.

Students proposing to connect themselves with the School are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1322 F street northwest, and at the W. S. Thompson Pharmacy, 708 Fifteenth street northwest, or upon application to the undersigned. S. M. YEATMAN,
37-4t Secretary.

Legal Notices.

FIRST INSERTION.

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Virginia D. Corbit**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of September, 1905. GEORGE HELLEN, 1528 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,486. Administration. [Seal.] 37-3t

Anson S. Taylor, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clinton Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **14th day of September, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of September, 1905. ALICE M. SMITH, Conduit road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,119. Administration. [Seal.] 37-3t

Newton & Gillett, Solicitors

In the Supreme Court of the District of Columbia.
Catherine A. Newton v. Thomas A. Valentine.
Equity No. 25,510.

The object of this suit is to have partition by sale of east fifteen feet of lot nine, in Davidson's subdivision of square one hundred sixty-three, in the city of Washington, District of Columbia. On the motion of the complainant it is, this 14th day of September, 1905, ordered that the defendant, **Thomas A. Valentine**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Post and The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice.
[Seal]
True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-3t

Digitized by Google

Legal Notices.

Joseph R. Fague, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Richard A. Arnold, Deceased. Probate. No. 12,773.

On consideration of the petition of Richard W. and Frederick S. Emmons, executors of said Richard A. Arnold, it is by the Court, this 13th day of September, A. D. 1905, ordered that the sale of part of original lot numbered four (4), in square numbered nine hundred and twenty-five (925), in the city of Washington, District of Columbia, made by said executors to A. D. Butz, at and for the sum of thirty-five hundred dollars ($3,500.00), cash, subject to a commission of three (3) per cent on said amount, to the party making the sale, be ratified and confirmed, unless cause to the contrary be shown on or before the **15th day of October, A. D. 1905.**

Provided a copy of this order be published in [Seal] The Washington Law Reporter once a week for three (3) weeks before said last named day. ASHLEY M. GOULD, Justice. A true copy. Attest: M. J. Griffith, Deputy Register of Wills. 37-3t

Geo. Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the **estate of Margaret Faunce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of September, 1905. PHILIP P. FAUNCE, 814 8th st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,142. Administration. [Seal.] 37-3t

John L. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ellen M. Kennedy, Deceased.
No. 13,185. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Otho Sullivan, it is ordered, this 8th day of September, A. D. 1905, that notice be and hereby is given to **Thomas Sullivan, Julia McCarthy (nee Sullivan), William Morgan, Ellen Morgan, Mary Morgan, and Ellen Morgan (nee Sullivan), and their unknown heirs, alienees, devisees, and next of kin,** and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. [Seal] Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-3t

R. B. Behrend, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Louis Esberg, Deceased.
No. 13,007. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Herman L. Karpeles, it is ordered this 12th day of September, A. D. 1905, that notice be and hereby is given to **Alfred I. Esberg, Herman Esberg, Gus Simon, Ida Graebeke, —— Simon, —— Neuberg, —— Katz, —— Katz, —— Katz, M. H. Esberg, Henry Esberg, Joster Esberg, Edith Esberg, and Solomon Esberg,** and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-3t

Legal Notices.

Frank S. Bright, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel Thomas Labby**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of September, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,988. Admn. [Seal.] 37-3t

Cole & Donaldson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Cassie Ann Butler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,991. Admn. [Seal.] 37-3t

T. Percy Myers, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James Dowd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of September, 1905. JOHN J. BROSNAN, 482 La. ave.; T. PERCY MYERS, 486 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,069. Administration. [Seal.] 37-3t

Wolf & Cohen, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Heinrich W. F. Dukehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of September, 1905. JOHN WALDMAN, 699 7th st. N. W.; H. A. SCHEUERMAN, 7 Cst. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,010. Administration. [Seal.] 37-3t

Cole & Donaldson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph Jefferson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,990. Administration. [Seal.] 37-3t

Digitized by Google

Legal Notices.

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Caspar Morgenweck**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of September, 1905. LINA MORGENWECK, by Chas. H. Bauman, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,409. Admn. [Seal.] 37-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Phebe Holmes Lea**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of September, 1905. FREDERICK A. LEA, 1458 Bacon st., Wash., D. C.; AUGUSTUS S. CRANE, 227 Rahway ave., Elizabeth, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,157. Administration. [Seal.] 37-3t

SECOND INSERTION.

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Alice Bland McAboy, Deceased.
No. 13,131. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Theodore N. McAboy, it is ordered this 7th day of September, A. D. 1905, that notice be and hereby is given to **Louise B. Legge, Austin Brockenbrough, Fanny Compton Frere, Ella Beckwith Lawton, Elizabeth Beckwith, and Brockenbrough Beckwith**, and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 36-3t

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.
Union Trust Company v. C. P. Storrs et al.
No. 25,642. Equity Docket No. 57.

The object of this suit is to ascertain the ownership of a certain sum of money on deposit in complainant's banking department to the joint credit of the defendants, R. Randolph Hicks and C. P. Storrs, complainant having been advised that each of said defendants is now claiming said fund to the exclusion of the other. On motion of the complainant, it is, this 6th day of September, A. D. 1905, ordered that the defendant, **C. P. Storrs**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 36-3t

Legal Notices.

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alexander Melville Bell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,130. Admn. [Seal.] 36-3t

Coldren & Fenning, Solicitors

In the Supreme Court of the District of Columbia.
Jennie M. Payne, Complainant, v. Thomas E. Waggaman, James B. Nicholson, Samuel E. Allen, Jr., John Sherman, Ella B. Sherman, Irving Williamson, Lawrence P. Graham, Josephine Chamberlain, R. W. McPherson, M. A. McPherson, E. T. McPherson, Stephen McArdle, the President and Directors of Georgetown College, H. Rozier Dulaney, Samuel Waggaman, and the Catholic University of America, a corporation, Defendants.
In Equity. No. 24,987.

Fred G. Coldren and Irving Williamson, trustees, having reported to the court that they have sold the real estate described as lots numbered 15, 16, and 17, in block 6 of Thomas E. Waggaman's subdivision of "Rosedale," now known as "Cleveland Park," as per plat recorded in the office of the surveyor for the District of Columbia, in liber county 9, folio 71, at public auction, to Oscar Luckett, as trustee for Josephine Chamberlain and the other holders of the notes secured by the first deed of trust on said property as shown by the amended bill herein, for the sum of $7,500, it is this 7th day of September, 1905, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of October, A. D. 1905**. Provided, a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. [Seal] 36-3t

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Ellen Thompson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 29th day of September, 1905, at 10 o'clock A. M.**, as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of September, 1905. CHARLES W. FLOECKHER, by R. Preston Shealey, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,346. Administration. [Seal.] 36-3t

H. H. Glassie and A. George Maul, Solicitors

In the Supreme Court of the District of Columbia.
Ross W. Morrison, Complainant, v. Annie E. Morrison, George L. Devers, Co-respondent, Defendants.
In Equity. No. 24,067.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 30th day of August, A. D. 1905, ordered that the defendant, **George L. Devers**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Times for three consecutive weeks prior to said day for once in each week. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 36-3t

Digitized by Google

Legal Notices.

Wolf & Rosenberg, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William G. Zimmerman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of September, 1905. JOHANNA M. ZIMMERMAN, 912 8th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,146. Administration. [Seal.] 36-3t

THIRD INSERTION.

Ralston & Siddons, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John Hay**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of August, 1905. J. W. WADSWORTH, JR., Mt. Morris, N. Y.; PAYNE WHITNEY, 51 Wall st., New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,136. Administration. 35-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Philo J. Lockwood**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,103. Administration. 35-3t

Gordon & Gordon, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Louis Kurtz, Senior**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1905. ROBERT H. T. LEIPOLD, 1300 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,112. Administration. 35-3t

Lester & Price, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James Coleman, sometimes known as James Colemon**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the **28th day of August, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of August, 1905. E. L. SCHMIDT, HARRY M. PACKARD, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,118. Administration. 35-3t

Legal Notices.

A. Leftwich Sinclair, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Johanna Engel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1905. NORMAN T. ENGEL, 590 Center Market. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,096. Administration. 35-3t

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caleb C. Willard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **29th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of August, 1905. KATE WILLARD BOYD, 1315 P st. N. W.; HENRY K. WILLARD, Kellogg Building; GEORGE E. HOWE, care of Henry K. Willard, Kellogg Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,101. Administration. 35-3t

W. E. Harvey, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Daniel A. Connolly, Deceased.
No. 1179. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonus non on said estate, by William B. King, it is ordered this 29th day of August, A. D. 1905, that notice be and hereby is given to **unknown next of kin** and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

SIXTH INSERTION.

John Ridout, Solicitor
In the Supreme Court of the District of Columbia.
Minna Schafer v. the Unknown Heirs, Devisees, and Alienees of Charles Wayman.
In Equity. No. 25,470.

The object of this suit is to establish of record the title in fee simple by adverse possession of the complainant to all of original lot eight, in square one hundred and ninety-six, in the city of Washington, in the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the day of the first publication of this order, which is to be published twice a month for said period of three months in The Washington Law Reporter and the Washington Post, otherwise the cause will be proceeded with as in case of default. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. jul 14, 21; aug 11, 18; sept 8, 15.

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No 38

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - SEPTEMBER 22, 1905

CONTENTS.

Editorial 593
Notes of Cases 596
Legal Notices 604

Corporation Counsel Edward H. Thomas.

As was confidently expected, the vacancy in the office of corporation counsel of this District, caused by the death of Hon. Andrew B. Duvall, has been filled by the promotion to that position of Mr. Edward H. Thomas, for some years first assistant to Mr. Duvall. The wisdom of this action on the part of the Commissioners is beyond question. Mr. Thomas is a prominent member of the District bar, and in legal ability fully measures up to the requirements of the important office to which he has been appointed.

Mr. Thomas was admitted to the bar of this District in 1877, and has had a successful career. He served for several years as an assistant United States attorney for this District under Hon. A. S. Worthington, resigning in 1886 to engage in private practice. As first assistant to the corporation counsel his duties consisted largely in the defense of suits brought against the District, and he added to the reputation previously gained as a capable trial lawyer. The ability and fidelity thus displayed earned for him the entire confidence of the Commissioners and of the community, and a guarantee that his administration of the office of corporation counsel will be one of exceptional success. It has been remarked of him that "he has no habits except the habit of work;" and the important and exacting duties of his new position will afford abundant scope for its exercise.

Mr. Thomas is exceedingly popular with his brethren at the bar, who cordially respect and esteem him as man and lawyer, and has been heartily congratulated by them upon his well-deserved promotion.

Renewals by Implication of Contract of Employment for Definite Term.

The case of Baker v. D. Appleton & Company, decided by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, is interesting as bearing upon the question of the tacit renewal from year to year of an original contract of employment. The facts, as stated in the opinion of the court, are as follows:

Prior to November, 1883, William H. Appleton, Daniel Sidney Appleton, William W. Appleton, and Daniel Appleton were engaged in business as copartners under the firm name and style of D. Appleton & Company, and the plaintiff, who had been the manager of the business of the copartnership at Chicago, Ill., was, on the 16th day of November, 1883, employed by William H. Appleton by the year at an annual salary of $5,000 and transferred to the city of New York. He continued with the copartnership firm till March, 1897, when the corporation of D. Appleton & Company was formed. After that he remained in the employ of the corporation at the same compensation, and continued to render the same services, with no new (or actual) arrangement or agreement, however, as to his compensation or the duration of the term of his employment.

On or about March 21, 1900, the corporation of D. Appleton & Company passed into the hands of a receiver, who on that day discharged the plaintiff and terminated his employment. On September 24 of that year the defendant was incorporated under the laws of the State of New York, and in October said receiver transferred to the defendant in this action all of the assets and property of the corporation that came into his possession, "subject, nevertheless, to the payment of the business indebtedness of this company and of J. Hampden Dougherty, as receiver of this company, all of which indebtedness, principal and interest, the party of the second part hereby assumes and covenants to pay as a part of the consideration for this sale and conveyance." The plaintiff brings this action to recover the unpaid salary accruing during the year 1900, subsequent to his discharge, upon the theory that his original employment by the firm of D. Appleton & Company was for one year—from December 1, 1883, to December 1, 1884—and that such contract was continued from year to year, and that in each successive year thereafter he continued in the employ of the firm and first corporation, rendering the same services and receiving the same compensation.

At the close of the evidence, both parties moved for the direction of a verdict, and the court granted the motion made by the plaintiff and directed a verdict in his favor. In affirming this ruling the appellate court said:

If the action were between the plaintiff and the firm of D. Appleton & Co., there would be no ground for contention, but it is claimed that, granting this, the evidence is insufficient to charge the defendant with the knowledge

Digitized by Google

imputable to the firm and does not furnish a sufficient or proper foundation for such conclusions of law or fact as is necessary to establish the liability of defendant in this action, and the question thus presented for our consideration is whether the evidence justified the conclusion reached by the trial justice that there was an existing yearly contract between the first corporation of D. Appleton & Co. and the plaintiff, which was renewed yearly during the existence of such corporation and operative and in force at the time of plaintiff's discharge, and if so whether the damages sustained by plaintiff, by its breach, were assumed by defendant when it succeeded the first corporation.

As between the plaintiff and the firm the latter were chargeable with knowledge of the contract made by the plaintiff with one of its members, to the extent of fixing the liability of the firm for damages resulting from its breach. Although the question presented is a close one and not entirely free from doubt, we are of the opinion that the liability assumed by the corporation was not limited to the payment of the existing indebtedness of the firm it succeeded. A fair construction of the instrument under which the property of the firm was transferred to the corporation charges the corporation, as matter of law, with knowledge of the existing contracts of the firm, and the obligations and liabilities attaching to such contracts were assumed by the corporation. As to such contracts the effect of the transfer and execution of the instrument referred to was to substitute the corporation in the place of the firm, with all the knowledge that the firm had or was chargeable with regarding them, and with all the liabilities arising therefrom that rested upon the firm.

The corporation became charged with knowledge of the plaintiff's original contract; that it had been renewed from year to year; that he was then in the employ of the firm under a yearly contract expiring on December 1, 1897, at an annual salary of $5,000, and his retention after that date, under the circumstances disclosed by the evidence, renewed the existing yearly contract which became operative and binding upon both parties until December 1, 1898.

The contract was on each December 1 thereafter renewed by the retention of plaintiff at the same rate of compensation, and at the time of his discharge was an existing valid contract by the provisions of which he was entitled to employment by the corporation until December 1, 1900, and the compensation for his services during that period of time at the rate of $5,000 per year.

It necessarily follows that his discharge, without justifiable cause, on March 21, 1900, was a breach of the contract, and for the damages resulting therefrom the first corporation was liable. This obligation and liability the defendant assumed when it succeeded the first corporation.

The learned trial justice was justified in directing a verdict for the plaintiff; the judgment is supported by the evidence, and the order appealed from must be affirmed, with costs.

In a concurring opinion by Hirschberg, P. J., it is said:

I concur in the view of this case which has been adopted by Mr. Justice Rich. The leading cases in the Court of Appeals on the duration of an indefinite contract hiring are Adams v. Fitzpatrick (125 N. Y. 124) and Martin v. The New York Life Ins. Co. (148 id. 117). In the Martin case it was held that an original hiring where no time was specified was only a hiring at will, notwithstanding the agreement was for the payment of compensation at a yearly rate. In the Adams case it was held that where there was a hiring for the fixed period of a year, it would be presumed on continuance in the employment after the expiration of the year, without further agreement, that the parties had assented to renew the engagement for a like period. This is in harmony with the prior decisions of the courts in this State, and the rule asserted has been often followed. Wallace v. Devlin, 36 Hun, 275; Dean v. Woodward, 52 id. 421, 432; Ball v. Stover, 82 id. 460; Lichtenhein v. Fisher, 87 id. 397; Hotchkiss v. Godkin, 63 App. Div. 468; Brightson v. Claflin Co., 84 id. 557.

Under these decisions it can not be doubted that when the members of the firm incorporated their business in March, 1897, the firm was under a legal obligation to retain the plaintiff in its service that year, being the fourteenth consecutive year of his employment, under no other contracts than an agreement for the first year as a fixed and definite period, and at an annual salary renewed from year to year by continuance in the service without change in the terms of the employment. As the firm then ceased doing business it is equally beyond doubt that it remained under a legal obligation to make good to him whatever loss might be sustained by reason of the deprivation of employment nine months before the expiration of the term.

It is conceded that the corporation in March, 1897, on taking over the property and business of the firm, duly assumed its business obligations. The form of the assumption is not disclosed by the record, the parties having stipulated on the trial in general terms that the transaction was accomplished in this way:

"The firm of D. Appleton & Company wrote a letter to the corporation offering to sell and transfer to that corporation all its assets, business, and property, subject to the payment of the business indebtedness of said firm, and the corporation passed a resolution agreeing to purchase the assets, business, and so forth of the firm, subject to such indebtedness of said firm to be assumed by the corporation." The corporation retained the plaintiff for the year 1897 without any agreement between him and it, and credited him upon their books at the end of the year the precise sum which the firm had agreed to pay him as annual salary and credited it to him as "salary for the year." In view of the nature of the plaintiff's services, and the importance to both parties of an engagement for some definite period; in view of the fact that the transfer of the business was practically only the continuance of it by the same men and with the same capital, although in an altered form; in

Digitized by Google

view of the fact that the plaintiff's services were continued with the corporation during the remainder of the year 1897, and during subsequent years precisely the same both in scope and compensation as they had been rendered for years to the firm, and in view of the manifest object of the general stipulation as to the terms of the transfer of the business, I do not think a court would be warranted in narrowing the expression of "the business indebtedness of the said firm" to the mere debts, as such, which may have been recorded upon the books, but that upon the contrary it may be fully found as a fact that the language used, whatever it may have been, was intended and understood by the parties to embrace the contractual obligations of the firm incident to and connected with the conduct of its business, including the firm's business contract with the plaintiff. That contract was presumably of equal benefit to the contracting parties, and in the absence of anything indicating a contrary intent, the right to the exclusive control of the plaintiff's services for the balance of the year 1897 may well be deemed to have been included among "the assets, business, and so forth of the firm" which the corporation acquired by its purchase.

If the corporation thus acquired and assumed the plaintiff's contract with the firm to complete the employment for the yenr 1897 (as it certainly did carry it out in fact) I can not see why at the end of that year the corporation was not in the same position logically as if it had made the bargain with the plaintiff for that year's work. It assumed his contract, whatever the terms may have been, and could not, without inquiry, deny knowledge of the nature and extent of the terms. It was chargeable in any event with the knowledge of such facts as inquiry would have disclosed. Williamson v. Brown, 15 N. Y. 354; Reed v. Gannon, 50 id. 345; Ellis v. Horrman, 90 id. 466; Fruhauf v. Bendheim, 127 id. 587. If at the end of the year 1897 the corporation desired that the plaintiff should continue his services at will instead of under an annual contract, good faith required that some notice of announcement should have been made of the change, but he was kept until the receivership in 1900, credited on the books each year with the same annual salary, and on his discharge in that year was clearly entitled to claim whatever loss might result to him by reason of that act.

That the defendant corporation was created for the purpose of reorganizing the business of the first corporation, and that on the purchase of the property of the corporation from the receiver it expressly assumed all its liabilities of whatever nature, is beyond dispute. The facts are so set forth in the complaint, and, not being denied in the answer, are to be regarded as admitted.

In commenting on the decision, the New York Law Journal says:

In our judgment the court is right in holding that the evidence justified the conclusion that there was an existing yearly contract between the first corporation of D. Appleton & Co. and the plaintiff, which was renewed yearly during the existence of such corporation and in force at the time of the plaintiff's discharge, and further, that the liability for damages sustained by the plaintiff by the breach of such contract was assumed by the second Appleton corporation. In his concurring opinion Presiding Justice Hirschberg directs attention to the rule of law governing the subject as illustrated by the decisions of the Court of Appeals in Adams v. Fitzpatrick (125 N. Y. 124) and Martin v. N. Y. Life Ins. Co. (148 N. Y. 117).

In the Martin case it was held that an original hiring where no time was specified was only a hiring at will, notwithstanding the agreement was for the payment of compensation at a yearly rate. In the Adams case it was held that where there was a hiring for the fixed period of a year it would be presumed on continuance in the employment, after the expiration of the year, without further agreement, that the parties had assented to renew the engagement for a like period.

Such legal rule and its limitations were further exemplified in the decision of the United States Circuit Court of Appeals, Third Circuit, in Taber v. Trustees of State Hospital, &c. (June, 1905, 138 Fed. 865), wherein it appeared that plaintiff was elected resident physician for a State hospital for the insane, for several terms of one year each. At the expiration of one of such terms the board of trustees postponed action on the election of a physician, and continued to postpone the matter for several meetings, when a successor to plaintiff was elected, and she was notified of such fact. She had full knowledge of the action taken at each meeting. It was held that under such circumstances there was no implied contract employing plaintiff for another year, but at the expiration of the year for which she had been elected her employment was subject to termination at any time, either by the board or by herself. The court said in part:

"It is true, no doubt, that where a person employed for one year continues in the employment, by mutual acquiescence, after the expiration of the year, the inference ordinarily is that the term of the employment has been extended for another period of one year; but in this instance that inference can not be deduced. No renewal of the plaintiff's employment for any fixed period can be implied, because the established facts do not admit of it. She was not re-elected in October, 1900, and she knew it. She was informed, too, of all the proceedings which have been referred to, from time to time as they occurred. They were contemporaneously recorded in the minutes of the board, and she testified that she always looked at the minutes; that it was part of her duty to do so. She saw fit to remain in her position with full knowledge that the question of her re-election was an open one, and she could not have failed to understand that, until an election should actually take place, her employment was but temporary, and subject to termination at any time, either by the board or by herself. She had no ground whatever for supposing that, if not re-elected, she would be retained precisely as if she had been; and her contention that there was, in legal effect, an employment for another year, is without force

Digitized by Google

because the implication of an agreement to that effect is absolutely precluded by the circumstances which the evidence conclusively disclosed."

Collision—Street Car—Negligence.

The Supreme Court of Louisiana held, in the case of Dewez v. Orleans Railroad Company, that persons emerging from streets that are intersected by others upon which electric cars are operated are bound in common caution to look and listen for the approach of such cars before attempting to drive across the tracks, and that though there may be a rule imposed upon its employees by the railway company that its cars shall keep a certain distance apart, the precaution mentioned should nevertheless be observed, and that the mere fact that a car has passed will not justify the driver of a vehicle in acting upon the assumption that no other is near when the contrary would become known by the ordinary use of his eyes and ears. In the case before it the court held that where a milk cart and an electric car moving upon lines which intersected each other almost at right angles collided in such a way as to show that the points of contact were the right shaft of the cart and the left front umbrella post of the car, it could not be said that the car ran into the cart any more than that the cart ran into the car.

Negligence—Dynamite—Children.

The Supreme Court of Minnesota held, in the case of Mattson v. Minnesota and North Wisconsin Railroad Company, that the degree of care required of persons having the possession and control of dangerous explosives, such as firearms or dynamite, is of the highest; that the degree of care must be commensurate with the dangerous nature of the article, and is greater and more exacting as respects young children, and that in cases where the latter are involved the utmost care must be exercised respecting the use and custody of such instrumentalities to guard against injury to others. In this case it appeared that the defendant left exposed and unguarded on its premises a large quantity of dynamite, which was found by the plaintiff's children, who caused it to explode, killing one and permanently injuring another. The court held that the evidence was sufficient to justify the jury in finding that the dynamite was obtained from the premises of the defendant; that the defendant negligently permitted it to remain thereon exposed and unguarded, and that the children were not guilty of contributory negligence.

Railway—Accident—Negligence—Risk.

In the case of The Philadelphia, Baltimore & Washington Railroad Company v. Devers, recently decided by the Maryland Court of Appeals, it appeared that the appellee was employed by the appellant as a flagman at night at a street crossing of its railroad tracks in Chester, Pa. Between the two main tracks the appellant had placed a watch box for the appellee to find shelter when not on the tracks. The box was temporarily moved for repairs, but had been apparently moved back to the place where it belonged before the appellee returned to work. When replaced, however, the box was too close to the track and was struck by an engine, and as a result the appellee was injured. He brought suit for damages and recovered judgment. On an appeal by the railroad company the court of appeals held that the case had been properly submitted to the jury, as the "watch box" in the case fell within the familiar rule which requires the master to exercise all reasonable care to provide and maintain proper and safe machinery, appliances, and places for his employees, and that the appellee did not assume the risk of a watch box placed without his knowledge too close to the track so as to be liable to be struck by passing trains.

Bankruptcy—Partnership—Insolvency.

In a recent bankruptcy proceeding in the U. S. District Court for the Eastern District of Missouri (In re Perley & Hays, 138 Fed. 927), it is held that a partnership is not insolvent, within the meaning of the Bankruptcy Act of 1898, where the property of the partnership, together with that of the individual members, exceeds in value the indebtedness of the firm and members. The court said in part:

The question arises as to whether or not the properties of individual members of a firm are to be taken into consideration when the issue of insolvency is raised of the partnership of which they are members. It is, I think, settled that a partnership, under the existing bankrupt law, is a distinct legal entity, which may be adjudicated a bankrupt by voluntary or involuntary proceedings, irrespective of any adjudication of the individual partners as bankrupts. At all events, it has been held by the Circuit Court of Appeals for the Second Circuit in Re Meyer et al., 98 Fed. 977, 39 C. C. A. 368. That case seems to indicate that, in order to put a firm into bankruptcy, the act of bankruptcy complained of must have been committed by the firm. In this case, however, if that were the only question involved, I should hold that the sale of the remnant of goods, after the fire, and within the four months, and the refusal to pay the petitioning creditor, and the concealment of the money, were of themselves intended to hinder, delay, and defraud the creditor. But if I should so hold, the real question in this case still remains. It is whether or not the bankrupts were insolvent, within the meaning of the present bankrupt law, or, to state it in another way, whether or not the individual properties of the partners are to be considered in determining the question of insolvency. It has been held in a number of cases that the individual properties must be considered, and I find no case to the contrary. Vaccaro et al. v. Security Bank of Memphis et al., 103 Fed. 436, 43 C. C. A. 279. This case, while not binding on this court, was decided by the Court of Appeals of the Sixth Circuit. The same doctrine is distinctly held in the case of Davis et al. v. Stevens et al., by Judge Carland, of this circuit,

Digitized by Google

in 104 Fed. 235-242. In both these cases the question was carefully considered, and those cases have the approval of this court. The court therefore finds the issues in favor of the defendants, and the petition in bankruptcy will be dismissed.

Depositions—Right to Compel Answers to Questions.

In Perry v. Rubber Tire Wheel Co. et al., decided by the United States Circuit Court for the Southern District of New York (138 Fed. 836), the court states the general rule to be that witnesses whose depositions are being taken under section 863 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 661), should be required to answer all questions which may possibly be material, subject to their right to be protected in their constitutional privileges. The court said:

The counsel herein are engaged in taking depositions under section 863, Rev. St. (U. S. Comp. St. 1901, p. 661). The plaintiff and her husband have refused to answer certain questions, and counsel for defendant has moved for an order to direct the witnesses to answer said questions. It is thought that the rule laid down in Blease v. Garlington, 92 U. S. 1, 23 L. Ed. 521, should be applied in the taking of such depositions. There is some uncertainty as to the practice in such cases, but the duty of this court is merely to see that the witness is properly protected in his constitutional rights, and that the process of the court is not abused. Wertheim v. R. R. (C. C.), 15 Fed. 716. The question as to the admissibility of the evidence is to be tested by the laws of the forum. Pritchard v. Norton, 106 U. S. 124, 1 Sup. Ct. 102, 27 L. Ed. 104. The general rule is that the witness should be required to answer all questions which may possibly be material. Matter of Whitlock, 51 Hun, 354, 3 N. Y. Supp. 855; Matter of Strong v. Randall, 90 App. Div. 192, 85 N. Y. Supp. 1089; Id., 177 N. Y. 400, 69 N. E. 721. An order may be entered that the witnesses Augusta L. E. Perry and John W. Perry answer the questions put to them.

Liability of Owner for Personal Injuries Inflicted by Horse.

In Conway v. Rheims, decided in September, 1905, by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, the action was brought to recover for personal injuries inflicted by a horse. It appeared from the evidence on behalf of the plaintiff that the horse was driven by servants of defendant up and down a city block for about twenty minutes, manifesting all the time extreme nervousness and fright, if not actual viciousness, constantly plunging, jumping, and rearing, going from one side of the street to the other in an unruly manner, until finally, without any apparent cause to especially frighten him, he broke for the sidewalk, throwing one of the drivers out of the wagon and acting uncontrollably, in spite of all the drivers and bystanders could do, until finally he ran into the plaintiff and injured him. It was held that the question of defendant's negligence was properly submitted by the trial court to the jury. The court said:

On the argument of this appeal I was inclined to the view that there was no sufficient proof of the defendant's negligence, inasmuch as there appeared to be no direct evidence tending to establish that the defendant or his servants knew, or should have known, that the horse was a dangerous one to drive upon the city streets. Subsequent study of the case has convinced me, however, that the learned trial justice properly submitted the question to the jury for disposition as one of fact. The plaintiff was injured without fault on his part by a horse in charge of two of the defendant's servants while they were driving or exercising it on Liberty street, in the Borough of Brooklyn, the horse becoming unmanageable under circumstances which might fairly be regarded as admonishing them that the event was reasonably to be anticipated.

The defendant is a dealer in horses, has been all his life, and as such was thoroughly familiar with their habits and dispositions. The horse which occasioned the accident was one of a carload which he had purchased in Pennsylvania a few days before the occurrence complained of. The horse was a large one, young and green, had never been fully shod until after his purchase by the defendant, and at the time of the injury to the plaintiff was being driven for training or exercise apparently for the first time since his purchase, although he had been previously exhibited to a prospective purchaser, when it is claimed he behaved well and properly. The defendant's stables are on Liberty street, and his servants were exercising the horse by driving him up and down the block. According to their evidence the horse acted all the time in an entirely docile and gentle manner until just before the accident, when he became frightened by the flapping curtain of a passing express wagon, got beyond their control, ran upon the sidewalk, got one leg over the shaft, and as they, jumping out of the wagon, endeavored with the aid of a bystander to hold him by the head, broke away from them and ran into the street again and there into the plaintiff, who was then about to mount his wagon, standing near the curb.

The learned trial justice charged the jury that if the accident occurred in the way these witnesses said it did there could be no recovery. But the evidence given by the plaintiff and on his behalf was very different and it must be assumed that the jury accepted it as true. According to that evidence the horse was driven up and down the block for a period of about twenty minutes, manifesting all the time extreme nervousness and fright, if not actual viciousness, constantly plunging, jumping, kicking, prancing, and rearing, going from one side of the street to the other in a very unruly manner, until finally, without any apparent

Digitized by Google

cause to specially frighten him, he broke for the sidewalk, throwing one of the drivers out of the wagon and acting uncontrollably, in spite of all the bystanders and drivers could do, until he ran into the plaintiff and inflicted the injury as stated. If this evidence furnishes the true history of the occurrence it can not be said as matter of law that the defendant's servants exercised reasonable care in keeping the horse so long a time upon the street while he was exhibiting such continuous manifestations of a fractious and unmanageable nature. On the contrary, the fair inference from this evidence is that the behavior of the horse was such as was well calculated to inform a driver of competent skill and experience that it was unsafe to drive him upon the street without special precaution to avoid possible mischief.

It can not be doubted that the defendant owed some duty of caution to the public when trying a green and unknown horse upon the street. Indeed, in the obvious expectation that trouble would be likely to occur when green horses were being driven for the first time, he had told his men that if a new horse became fractious they should not persist in driving him in single harness, but should take him to the stable and hitch him double with an old horse. This rule his servants wholly disregarded on the occasion in question, but aside from that fact I think the jury could properly say that ordinary care required that they should have taken the horse to the stable before he got beyond their power and control. It seems impossible that they, if in the possession of average skill, could not have foreseen in the course of twenty minutes of trial, for the purpose largely of ascertaining whether he was safe in harness, during all which time his unruly temper was displayed, that he would ultimately break the bounds of management to the possible injury of persons lawfully on the street, and if so their conduct was certainly lacking in ordinary care and prudence.

The case is very different from those wherein a horse which has proved tractable for years suddenly displays some vicious or dangerous propensity. In such cases it is necessary to prove a scienter as a condition precedent to a recovery for damages which may have been inflicted. But the purchaser of green horses by the carload is bound to apprehend the occasional exhibition of infirmities of disposition or want of restraint during the process of training, whatever assurances of docility may have accompanied the sale, and when it is made apparent upon a trial that one of the number is not kind and gentle, it is not unreasonable to require a degree of caution in handling him somewhat commensurate with the danger incident to the situation. There is no difference in legal effect between actual knowledge of dangerous traits and circumstances which naturally suggest the likelihood of their existence. As was said by Chief Judge Andrews in Benoit v. Troy & Lansingburgh R. R., 154 N. Y. 223, 227: "It may very well be that horses may be so unmanageable that they can not be driven in the public streets without manifest danger. If this was established in a particular case, we see no reason why their use by the owner, with knowledge of their vicious character, should not make him responsible for any consequent injury."

In Cadwell v. Arnheim, 152 N. Y. 182, 189, Judge Gray says: "There is no rule of law which compels a person driving horses upon a highway absolutely to keep them under control. He is bound only to exercise that reasonable degree of diligence and care which a man of ordinary prudence might be expected to exercise under the same circumstances. If the servant of the master is driving, the latter is, of course, responsible for the omission by his servant of the diligence and care exacted by the rule." Tested by this rule, I think it was for the jury to say as a fact whether the defendant's servants acted with reasonable diligence and care in continuing to drive the horse up and down the block until the apparently inevitable crisis came, and whether ordinary vigilence would not have sooner admonished them that persistence in the attempt to subdue him in the public street without some customary adventitious aid would result in the animal finally getting the best of them to the injury of others.

There are errors in ruling charged by the appellant, but none which compels a reversal.

Injury to Employee—Negligence of Master.

In Fuller v. Ann Arbor R. Co., decided by the Supreme Court of Michigan in July, 1905 (104 N. W. 414), it appeared that a servant, while repairing a railroad car for his master, threw a wrench thereon, striking a torpedo, which exploded, injuring him. He recognized the torpedo as one used by the master, but it was not shown how it happened to be on the car, or who put it there, or how long it had been there. It was held as a matter of law that actionable negligence on the part of the master in failing to furnish a safe place for the servant's work was not shown.

Injury to Employee—Negligence of Third Person—Liability of Master—Safe Place to Work.

In Penner v. Vinton Co., decided by the Supreme Court of Michigan in July, 1905 (104 N. W. 385), it was held that the contractor for the woodwork on a building is not liable for injury to his employee from negligence of an employee of the contractor for the mason work in dropping a brick on him.

It was further held that the doctrine of safe place to work has no application where the place is merely made unsafe by the negligent act during work by an employee of a third person, for which the employer is not liable.

Railroads—Yard—Duty to Fence—Injuries to Trespassers—Warning Notice.

In Katzinski v. Grand Trunk Ry., decided by the Supreme Court of Michigan in June, 1905 (104 N. W. 409), it was laid down that the law does not require a railroad company to fence its railroad yard.

It was held that where a railroad company posted a warning notice along its yard limits, notifying all persons to keep off the tracks, it was not liable for the injuries sustained to a child going on a track filled with cars liable to

Digitized by Google

be moved at any time, on mere proof that children were in the habit of playing on or near the tracks, without showing that the employees knew the child was on the track.

Posthumous Libel.

Mr. Kipling Common writes to the London Times: It is well known that the maxim actio personalis cum persona moritur applies to all actions of libel and slander, and that, if either party die before the verdict, the action is at an end. Those, therefore, who approve of a defendant's estate being exonerated in this way can hardly be expected to feel much sympathy for the victim of a posthumous libel contained in a will. Yet the latter may have a very substantial grievance.

The court, it is true, can exercise its power of omitting from the probate offensive or libellous passages in a testamentary disposition; but this it will not do, except in cases of a very special and definite character. Probably, therefore, the following bequest from an ardent teetotaller to a moderate drinker would not be omitted: "I give and bequeath to A B the sum of 50*l.* upon condition that she signs the pledge." Yet such a condition inserted in a will might do the lady legatee an amount of damage for which 50*l.* would be but poor compensation. If it be said that the court makes itself particeps criminis by allowing probate of such a bequest, the answer must be that a testator should look after himself and his estate, and has no right to expect a judicial tribunal to protect him from the consequences of his malice or his folly.

It certainly is a curious condition of the law that, while a libel upon a dead man may form the subject of a criminal prosecution, a libel by the dead upon the living leaves the latter without redress. I submit that in cases of posthumous libel the executors should be answerable in damages to the extent of the testator's estate.

Accord and Satisfaction.

[London Law Journal.]

In Nathan v. Ogdens (Lim.), one of the numerous cases arising out of the sale of the defendants' business to the Imperial Tobacco Company and the consequent lapse of their bonus scheme, several interesting points as to accord and satisfaction were raised. The liquidator of the defendant company sent to the plaintiffs a check to order, on the back of which the words, "Received this check, being my share of the second and final bonus distribution of the company," were printed; and the plaintiffs signed this receipt and cashed the check and afterwards brought this action for damages for breach of contract. Mr. Justice A. T. Lawrence disposed of the defense that by accepting the check and signing the receipt the plaintiffs had waived any further claim on the simple ground that there were no words of release or discharge in the receipt. The company having gone into liquidation, the use of the words "Final distribution" expressed the true state of facts. There would be no further distribution; but the language of the receipt was evidence of an intention to waive a claim for damages. It thus became unnecessary to give a decision on the argument that the check was a negotiable instrument, the acceptance of which in respect of a debt for a larger sum amounted to an accord and satisfaction. There is, of course, authority that a negotiable instrument will operate, if so taken, as satisfaction for a debt of a greater amount, its negotiability making it in theory more advantageous than the original debt (see Sibree v. Tripp, 15 Law J. Rep. Exch. 318; 15 M. & W. 23, and Goddard v. O'Brien, L. R. 9 Q. B. Div. 37); and the learned judge was of opinion that the check was a negotiable instrument, notwithstanding a direction on the face of it that the receipt must be signed, and that the signature would be taken as an indorsement. This direction, he said, was not addressed to the bankers, and did not affect the nature of the order to them. Even if the receipt had plainly admitted that it was in full satisfaction of a debt, it might in some circumstances have been arguable that it was not conclusive, though no doubt strong evidence of accord and satisfaction, for there is ample authority that a receipt is not technically an estoppel.

The Measure of Damages in Conversions by Stock Brokers.

The ease with which the English system of common law can be molded to meet the exigencies of modern business is aptly illustrated in the evolution of the rule of damages in conversion, where the subject of the conversion is liable to rapid fluctuation in value, as is the case with stocks or bonds in the hands of a broker. Out of a conflict which seemed for the time utterly hopeless, the courts have gradually produced a rule which is now being rapidly seized upon as affording a just and safe criterion. This is stated with extreme lucidity in the twin cases of Federal Stock & Grain Co. v. Wiggins, 77 Conn. 507, and Ling v. Malcom, 77 Conn. 517. Both cases arose out of an unauthorized conversion of stocks in the hands of a broker, and the rule was there given as follows: "The correct measure of the plaintiff's damage was, therefore, the excess, if any, over the price realized (at the sale on June 10) of the lowest sum for which he could have placed the stocks after notice of the sale, had he given an order to that effect with reasonable promptness; or, in case of fluctuations of market price between the wrongful sale and the latest day to which it would have been reasonable to defer a repurchase, the difference, if any, between the price obtained when the shares were converted and the highest market price, in excess thereof, attained during that period."

Three rules for the computation of damages in cases of this character have been adopted by the various courts. In a few States it is held that the value of the stock at the time of the conversion should furnish the standard of measurement. Freeman v. Harwood, 49 Me. 195; Baltimore Ins. Co. v. Dalrymple, 25 Md. 269; Brylan v. Huguet, 8 Nev. 345. It is obvious, however, that this rule leaves the customer at the mercy of his broker, and the rule has received but limited indorsement.

The first rule to be adopted by influential courts was that damages for the conversion of

Digitized by Google

stock should be computed upon the basis of the highest price intermediate the conversion and the time of trial. This rule originated in, and is still followed by, the English courts. Oud v. Rutts, 1 P. Wms. 572; Harrison v. Harrison, 1 C. & P. 412, 11 E. C. L. 436; Owen v. Routh, 14 C. B. 372. When cases involving the point arose in the United States the tendency was to follow the English cases. Romaine v. Allen, 26 N. Y. 309; West v. Pritchard, 19 Conn. 212. But the rule was found to be inequitable in many cases, as it practically allowed the party bringing suit to delay his action, and thus increase in many instances the amount of his damages. The rule continues, however, to be followed in a few States. Sturgis v. Keith, 57 Ill. 451; Parsons v. Martin, 11 Gray (Mass.) 111; Neiler v. Kelley, 69 Pa. St. 403, 408. In the latter State it has been limited to those cases where a relation of trust exists between the parties, and, where a transfer of stock was permitted by a bank on a forged power of attorney, there being no breach of trust, the value at the time of the conversion was accepted as a criterion. In re Jamison & Co.'s Est., 163 Pa. St. 143; Ins. Co. v. Phila., etc., R. R. Co., 153 Pa. St. 160. In some States the English rule has been adopted by statute, but the courts have required the complainant to proceed without unreasonable delay, and where this was not done, have estimated upon the basis of the value at the time of conversion. Fargo First Nat. Bk. v. Minn. Elevator Co., 8 N. Dak. 430.

The case of Romaine v. Allen, supra, opened the eyes of the New York courts to the dangers of the English rule. In that case the trial was a protracted one before a referee, and the stock, which was worth $3,937.50 at the time of conversion, rose to $8,175 during the course of the trial. This was allowed by the referee as damages. When the subject came again before the Court of Appeals in Baker v. Drake, 53 N. Y. 211, 217, the decision in Romaine v. Allen was reversed, and the now prevailing rule adopted.

This was subsequently reaffirmed in Wright v. Bank of Metropolis, 110 N. Y. 237, and by the Federal Supreme Court in Galigher v. Jones, 129 U. S. 193. The rule in these cases, and as it is more clearly stated by the Connecticut court, is now adopted by the majority of the States. Citizens' St. Ry. Co. v. Robbins, 144 Ind. 671; Dimock v. U. S. Nat. Bk., 55 N. J. Law, 296; Ralston v. Bk., 112 Cal. 208. Although severely criticised by Mr. Sedgwick in his work on "Damages," it has the advantage of affording the complainant a just and equitable relief without either giving him the opportunity to speculate upon his damages upon one hand, or on the other, of imposing a harsh and excessive punishment upon the debtor. Sedgwick, Damages, sec. 508, et seq. Where the stock has not advanced, under the prevailing rule the complainant can obtain only nominal damages. Taussig v. Hart, 58 N. Y. 425.

It is interesting to note that the Connecticut court held it necessary to plead as special damage the fact that the stock had risen in value between the time of conversion and the time when it might have been replaced, and would not allow proof of that fact to be admitted under the general claim for damages.—Yale Law Journal.

Liability of Innkeeper.

The decision of Judge Cochrane at the Albany Trial Term of the Supreme Court in Crapo v. Rockwell, 94 N. Y. Supp. 1122, is to be commended because administering sound legal principles as well as reaching a just result. It was held that a woman who had lived for seventeen months in a hotel which accommodated both transient and permanent lodgers, and had moved property into her rooms, which indicated an intention to make more than a temporary sojourn, and had made the arrangements for her stay with the proprietors themselves, instead of the clerk, was not a traveler and guest, within the rule which makes an innkeeper an insurer of the property of his guest, although when she first went to the hotel she contemplated housekeeping, and never made any agreement for lodging for a definite time, and had frequently changed her apartments during her stay.

The most interesting feature of the opinion is that portion which distinguishes the case of Hancock v. Rand, 94 N. Y. 1. The learned judge remarked:

"Great stress is placed by the plaintiff on the case of Hancock v. Rand, 94 N. Y. 1. 46 Am. Rep. 112. That case was decided by a bare majority of the court, and while, of course, it is controlling in reference to a similar state of facts, nevertheless it is manifest that the doctrine of innkeepers' liability was there carried to the limit. But there is a wide distinction between that case and this. In that case plaintiff was an inmate of the hotel in question for seven months, and had been there four months when her property was taken. In this case plaintiff was at the annex about seventeen months. But the controlling feature in that case was that plaintiff was the wife of General Hancock, an officer in the United States Army, without a permanent residence anywhere, and continually subject to marching orders."

The decision in Hancock v. Rand was logical enough in theory, but the distinction drawn in favor of the plaintiff was, in our judgment, without substantially just ground. Certainly the doctrine of that case ought not to be extended so as to increase the arbitrary, highly technical liability of an innkeeper.

The pecular obligations and liabilities imposed upon innkeepers as such are based upon the theory of providing temporary accommodations for transient guests. Public policy formerly required that a traveler should be guaranteed shelter at public inns, and that because he was presumably unacquainted with the character of an inn, the proprietor should be held an insurer of the safety of his property. It is obvious that these considerations do not apply—especially under changed modern conditions—in cases where an inmate of an inn is not a wayfarer, but remains indefinitely as a boarder.

The question is treated with strong common sense by the English courts. In Lamond v. Richmond, 1897, 1 Q. B. 541, in which the action of an innkeeper in terminating business relations with a person and compelling her to leave his inn on the theory that she had ceased to be a traveler and had become a boarder, was justified, Lord Fisher, M. R., observed:

"The plaintiff has brought this action relying

Digitized by Google

on the custom of England, and not on the point raised now for the first time of a contract outside the custom. The question is whether it is the law that if a person goes to an inn in the character of a traveler that person retains the same character for any time, however long. If so the law would be contrary to the truth, and I will never submit, unless compelled by an act of Parliament, to say that a thing shall be deemed to be that which it is not. Therefore, the question whether a person has ceased to be a traveler seems to me again to be a question of fact, and mere length of residence is not decisive of the matter, because there may be circumstances which show that the length of the stay does not prevent the guest being a traveler, as, for instance, where it arises from illness; but it is wrong to say that length of time is not one of the circumstances to be taken into account in determining whether the guest has retained his character of traveler."

Commenting on the same decision, Law Notes says:

It has just been decided by a New York court that the proprietor of a hotel is not responsible for the safety of the goods of his permanent boarders. This will doubtless be regarded as something new and revolutionary by the large and increasing class of people who nowadays live permanently in hotels. And so it may appear, indeed, to others, as witness the following newspaper comment upon the decision: "It has long been the rule that money and valuables should be kept in a safe, and that the proprietor of a hotel was not responsible for the possessions of transient lodgers unless such valuables are put into the possession of the hotel proprietor to be locked in a safe place. But this new decision leaves the permanent guest in quite as helpless a situation. It would seem from this decision that even the permanent guests must take their money and valuables down to the proprietor every night and have them put in a safe to be called for when wanted." As a matter of fact, the decision is neither new, nor is it, in its last analysis, anything more than the reaffirmation and application to modern conditions of certain principles as old, almost, as the law itself. The precise question has been heretofore passed upon by at least one of the State courts of last resort. In Utah, thirty years ago, the Supreme Court decided in the case of Lawrence v. Howard, 1 Utah, 142, that a party living at a hotel, as a regular boarder, by the month, at a fixed price, is in no sense a guest so as to hold the proprietors liable as innkeepers. And there are numerous other authorities which inferentially, at least, are to the same effect.

The peculiar liability of an innkeeper in respect to the goods of his guest has long been recognized as demanding, as a primary requisite, that the relation of innkeeper and guest shall actually exist. That is, the guest must be a mere transient visitor and not a permanent boarder. In early times the actual as well as the legal distinction between inns and boarding houses was much more apparent than at present. Then inns were patronized only by travelers seeking transient accommodations, and boarding houses were sought by those who wished to find a permanent home, at least for a certain length of time. The innkeeper was liable for the safety of the goods of his guest, while the boarding-house keeper was under no such obligations. In modern times the situation has changed, but the legal rule remains the same. Hotels are now used both as inns and as boarding houses. As was said in the Utah case above mentioned: "In this country hotel keepers act in a double capacity, being both innkeepers and boarding-house keepers. As innkeepers they entertain travelers and transient persons, those who come without bargain as to time and price and go away at pleasure, paying for only actual entertainment received. As boarding-house keepers they entertain residents and regular boarders and lodgers for definite lengths of time and at specific prices previously agreed upon." The liability of the proprietor of a hotel, then, for the safety of the goods of his patrons depends upon his relation to such patrons. If they are using his hotel as an inn, that is, making it a place of transient accommodation, the relation of innkeeper and guest exists and the innkeeper is liable as an innkeeper. But if they are using the hotel as a boarding house, the relation of boarding-house keeper and boarder exists, and there is no obligation upon the part of the former to take care of the personal belongings of the latter.

Rescission—Restoration of the Status Quo.

The following interesting opinion was rendered in the Court of Common Pleas, Allegheny County, Pennylvania. It may be found in the Pittsburg Legal Journal of August 23, 1905. Ward v. Anderson. A bill in equity to cancel an agreement for the purchase of real estate and of a note given in part payment therefor and the redelivery of security given as collateral security for the note, will be decreed where it appears that the agreement of sale provided for a general warranty deed and the land to be free of incumbrance, but the plaintiff (the purchaser) discovered before the delivery of the deed that the lessee had the right to remove one of the buildings, which was of material value at the termination of his lease. The plaintiff's right to a decree in this case was strengthened because there was nothing in the agreement relating to the tenant's right to removal of the building and the defendant's parol evidence tending to establish plaintiff's knowledge of this fact was not established by evidence which was clear, precise, and indubitable. Among other things the court said:

"If Ward has the right to recover, why not the right to rescind this contract before final execution? Why should this court, exercising equitable powers, compel payment for lands, even with general warranty, when Ward does not obtain a good right to all that he purchased? If enforced payment could not be retained, why make sincerity of action a necessity? Stoddart v. Smith, 5 Binn. 355. This is not the case of a suit upon a note or bond, given for purchase of money after delivery and acceptance of a deed on the ground of a defect in title, of which defendant had notice at the time of purchase; nor of a purchaser taking property with a known defect and taking the covenant as a protection against the defect, but it is a

Digitized by Google

case where the purchaser agreed to take all of a certain piece of property without incumbrances, and with covenants of general warranty. Even if he knew there were defects in the title, it does not follow that he agreed to so accept it. If such was the intention, it should have been put in the contract. The contention that the first contract expired and that this transaction depends upon the second contract alone, can not be sustained. The two contracts must be taken together, as the second distinctly refers to the first and recites that it, the first contract, is arranged on a new basis. One of these new stipulations is that Anderson may sell the property to someone else. The tender of deed to Ward on November 3d and his statement that he would accept the property when the money was raised, did not execute the two contracts and bind him to final acceptance, if before that time he ascertained that the tendered deed did not convey all that was contracted for. Let a decree be prepared continuing the injunction; cancelling the agreement of purchase and sale and the note in defendant's possession; directing the redelivery of the collateral security now held by him, as well as the repayment of the purchase money advanced."

This case shows the scope of equitable powers. It is a proceeding for a rescission. There is a marked difference between a proceeding in equity for a rescission and a proceeding at common law upon a rescission. See Central Law Journal, May 19, 1905, leading article entitled the "Difference Between a Proceeding for a Rescission and One Upon a Rescission." In the above case the court must have proceeded upon the theory that there had been a total failure of contract. It is not necessary that every stipulation in a contract be broken in order to constitute a total failure. If a stipulation, which might be regarded as one of the elements, without which it is reasonable to conclude the contract might not have been made, is abandoned, or there has been a refusal to perform it, or the party upon whom performance devolves put it out of his power to execute, then there is a total failure, an abandonment of the contract, or a rescission of it, and the injured party may so regard it. Lake Shore & Mich. So. Ry. Co. v. Richards, 30 L. R. A. 30 and notes thereunder; Lincoln Trust Co. v. Nathan, 175 Mo. 175.

Negligence—Right of Workman Putting Himself in a Place of Danger to Expect a Customary Warning.

[Central Law Journal.]

In the case of D'Agastino v. Pennsylvania R. Co., 60 Atl. Rep. 1113, the plaintiff's intestate was employed by the defendant as a track laborer. On March 18, 1902, he was working on the tracks of the company at Waverly. There are several parallel tracks at this point. At the time he was killed the deceased was working upon track No. 5. The gang of which the deceased was a member was working on tracks Nos. 3, 4, and 5. Deceased was engaged in sorting loose stones from the earth on track No. 5, which was the drill track, and throwing the stones, when sorted, on track No. 4, which is the west-bound passenger track. While at work the deceased was necessarily bent over. He could not, of course, devote his attention to his work and the approaching trains at the same time. The proof in the cause shows that there was a foreman and an assistant foreman present, who did not actually engage in the work, but only acted as superintendents. The proof was that the foreman of gangs of men at work as the deceased and his fellow laborers were at the time he was killed were accustomed, upon the approach of a train, to call out to the men, "Look out on track No. 3!" "Look out on track No. 4!" or whatever track it happened to be upon which the train was approaching. It is clear that the men relied upon this warning, and it is equally clear that it was the custom of the company to give it. It is conceded that when the deceased was killed by the backing upon him of a freight engine on track No. 5 no such warning was given. Both the foreman and his assistant were absent at the time. They were at the "shanty" some distance away. It was testified by the foreman that it was the custom, when he left the men unprotected, owing to his going on some temporary duty, for him to warn them of his leaving, and to caution them to look out for themselves; to call out to them, "Now boys, look out!" He says he did this on this day, but it appears by the proof that, if he called at all, he did not call so that all heard, and that the deceased was too far away to hear, if he did so call.

On this state of facts the court said: "We think that the deceased had a right to rely upon the fact that, if there was any danger from an approaching train, the customary warning would be given. There was no error in the refusal to nonsuit or to direct a verdict for the defendants. Where a workman, in the discharge of his duty, has placed himself in a position of probable danger, and where he has a right to expect a warning before the danger becomes actual, and he is injured because no warning was given, the question whether he assumed the risk or was guilty of contributory negligence can not be decided by the court. Albanese, Admr. v. Central R. Co., 70 N. J. Law, 241, 57 Atl. Rep. 447; Harmer v. Reed Apartment Co., 68. N. J. Law, 332, 52 Atl. Rep. 402. Under the proof this case can not be distinguished on principle from that of the Belleville Stone Co. v. Mooney, 61 N. J. Law, 253, 39 Atl. Rep. 764, 39 L. R. A. 834. In that case it was held, where the giving of a warning was embraced in the duty owed by the employer to the employee in order that the place where the employer sets the employee to work may be kept safe, that the failure of the foreman to discharge this duty carefully was imputable to the employer, and that such failure was not one of the obvious dangers of which the employee assumed the risk. It was strongly contended in this case that the danger to the deceased of being run over was clearly an obvious one. On this point, in Belleville Stone Co. v. Mooney, Mr. Justice Dixon says: 'Nor will the doctrine that servants assume the obvious risks of their employment save the defendant in this case, for that doctrine is not applicable to the risks arising from negligence in the discharge of the master's duty to his servant. No doubt the plaintiff took the risks of the system under which he knew the quarry was worked. He

Digitized by Google

could not be heard to complain that places of refuge close at hand were not provided, or that other possible precautions, which he saw were not in use, were omitted. But he had a right to expect that the precautions which the defendant had provided for the security of the quarrymen should be carefully observed, and he did not assume the risk of a negligent observance.' "

A foreman who directs a workman to engage in work which turns out to have been dangerous, the workman having relied on the foreman to notify him of the danger, is not guilty of contributory negligence. Hass v. Balch, 26 Fed. Rep. 984, 6 C. C. A. 201, 12 U. S. App. 534.

Where there was doubt as to the boss having given warning of dangers of which it was his duty to warn men under his charge, the question is one for the jury. Alaska Treadwell Gold Min. Co. v. Whelan, 64 Fed. Rep. 462, 29 U. S. App. 1; Mills v. East Tenn., V. & G. Ry. Co., 87 Ga. 102, 13 S. E. Rep. 205; Morebach v. Home Min. Co., 53 Kan. 731, 37 Pac. Rep. 122; Cox v. Senite Granite Co., 39 Mo. App. 439; Warner v. C., R. I. & P. Ry. Co., 62 Mo. App. 184; Fort v. Whipple, 11 Hun, 586; Benzing v. Steinway, 101 N. Y. 547, 5 N. E. Rep. 449; Kooswrowska v. Glasser, 8 N. Y. Supp. 197.

Residents of a schoolhouse neighborhood who contribute money for the erection of a building, to be built by individual contributions, for the use and benefit of the people of the neighborhood, in order that a private school may be taught there when subscriptions for that purpose can from time to time be raised, the title to the building being vested exclusively in the people of the neighborhood, are held, in Lomax v. Phillips (La.), 68 L. R. A. 661, to have no right to sue to recover individual damages to themselves against one who maliciously tears down and removes the building.

Keeping a hotel is held, in United States Hotel Co. v. Niles (C. C. A. 6th C.), 68 L. R. A. 588, not to be trading, or a mercantile pursuit, within the meaning of a statute permitting the institution of involuntary bankruptcy proceedings against corporations principally engaged in trading or such pursuit.

Failure to present and give notice of dishonor of a note given as collateral security to another is held, in Coleman v. Lewis (Mass.), 68 L. R. A. 482, not to operate as pro tanto satisfaction of the principal note.

One holding as collateral security commercial paper which is secured by mortgage on chattels is held, in Scott v. First Nat. Bank (Ind. Ter.), 68 L. R. A. 488, to be liable to his debtor for permitting the lien of the mortgage to expire, and the obligors upon the paper to become insolvent, without taking any steps to enforce payment of it, so that the security is entirely lost. With these cases is a note on the effect of failure of holder to make demand or give notice of dishonor of paper held as collateral or conditional payment.

A railroad company which can not, because of a strike, obey the shipping directions as to the route by which the goods shall be sent forward, is held, in Fisher v. Boston & M. R. Co. (Me.), 68 L. R. A. 390, to be liable to the shipper in case it selects another route, without consulting him, on which the freight charges are greatly increased, where means of communication with the shipper are easily available, and can be utilized without injury to the property, although the bill of lading stipulates that it may, in case of necessity, forward the goods to destination by any route.

The inability of the railroad company to perform its contract to carry the purchaser of a round-trip limited ticket on his return journey because of a strike is held, in Elliott v. Southern P. Co. (Cal.), 68 L. R. A. 393, not to extend the time within which it is bound to honor the ticket.

The consent of a patient to be treated by a Christian Science healer is held, in Spead v. Tomlinson (N. H.), 68 L. R. A. 432, to preclude his holding him liable in damages for failure to effect a cure, although that method of treatment is illegal under the statutes of the State.

A statute giving the personal representation of a person negligently killed a right of action for the death, the proceeds of which are to be distributed among his legal representatives, is held, in Whitlow v. Nashville, C. & St. L. R. Co. (Tenn.), 68 L. R. A. 503, not to be a penal statute, which can not be enforced by the courts of other States.

A statute forbidding the forfeiture by local corporations of insurance policies for non-payment of premiums, until a certain time after notice of the amount and date of payment has been mailed to the insured at his last-named post-office address "in this State," is held, in Metropolitan Life Ins. Co. v. Bradley (Tex.), 68 L. R. A. 509, not to apply to policies issued in other States, unless expressly made applicable by the terms of the policy.

Exhibition of a painting at an academy of arts to which the public is admitted only by payment of a fee, and the rules of which expressly forbid patrons to copy paintings while so on exhibition, is held, in Werckmeister v. American Lithographic Co. (C. C. A. 2d C.), 68 L. R. A. 591, not to be a publication, although it contains no notice of copyright, which will prevent the artist or his assignee from enforcing against persons subsequently attempting to publish copies of it for commercial purposes the rights which would have been secured by compliance with the copyright law.

A member of a corporation organized in the interest of a political organization is held, in McClintock v. Young Republicans of Philadelphia (Pa.), 68 L. R. A. 459, to have a right to the inspection of the membership roll, which may be enforced by mandamus.

Digitized by Google

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

GEORGETOWN UNIVERSITY

(FOUNDED 1789.)

SCHOOL OF LAW.

FACULTY.

REV. DAVID H. BUEL, S. J.,
President of the University.
HON. HARRY M. CLABAUGH, LL. D.,
(Chief Justice, Supreme Court, District of Columbia)
Dean of the Faculty and Lecturer on Common Law Pleading and Practice, and Equity Pleading and Practice.
GEORGE E. HAMILTON, LL. D.,
Lecturer on the Law of Wills.
HON. SETH SHEPARD, LL. D.,
(Chief Justice of the Court of Appeals of the District of Columbia)
Lecturer on Constitutional Law, the Law of Corporations, and Equity Jurisprudence.
HON. ASHLEY M. GOULD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Contracts, Criminal Law, and Domestic Relations.
HON. DANIEL THEW WRIGHT,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Insurance.
HON. WENDELL PHILLIPS STAFFORD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Agency.
CHAS. A. DOUGLASS, A. B., LL. B.,
Lecturer on the Law of Torts, Negotiable Paper, and Elementary Law.
MICHAEL J. COLBERT, A. M., LL. M.,
Lecturer on the Law of Personal Property and Partnership.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
Lecturer on the Law of Real Estate and the Law of Evidence.

Judge of the Circuit Court: DANIEL W. O'DONOGHUE, A. M., Ph. D., LL. M.
Court of Appeals: HON. JOB BARNARD and MESSRS. LEIGH ROBINSON and J. HOLDSWORTH GORDON.
Quiz Masters: CLARENCE R. WILSON, A. B., LL M.; DANIEL W. O'DONOGHUE, A. M., PH. D., LL. M., and JAMES S. EASBY-SMITH, A. M., LL. M.
SAMUEL M. YEATMAN, A. M.,
Secretary and Treasurer.
FRANK E. CUNNINGHAM,
Assistant Secretary.

ADDITIONAL LECTURERS IN THE FOURTH YEAR OR POST-GRADUATE COURSE.

HON. HOLMES CONRAD,
(Late Solicitor-General of the United States)
On the History of the Development of Law and Comparative Jurisprudence, and on the History of the English Law.
HON. SETH SHEPARD, LL. D.,
(Chief Justice Court of Appeals of the District of Columbia)
On the History of Constitutional Law and the Foundations of Civil Liberty.
REV. RENE HOLAIND, S. J.,
On Natural Law and Canon Law.
MONROE SMITH, LL. D.,
(Professor in the School of Political Science of Columbia University, New York City)
On Civil Law.
HON. LOUIS E. McCOMAS, LL. D.,
(Associate Justice of the Court of Appeals of the District of Columbia)
On International Law and Foreign Relations of the United States.
RALEIGH C. MINOR, LL. D.,
(Professor of Law in the University of Virginia)
On the Conflict of Laws.
HON. JOHN W. YERKES, LL. D.,
On Railroad Accident Law, Municipal Corporations.
J. NOTA McGILL, LL. M.,
On Patent Law.
ALDIS B. BROWNE, LL. B.,
On Jurisdiction and Practice of United States Courts.
WILLIAM C. WOODWARD, M. D., LL. M.,
On Medical Jurisprudence.
GEORGE E. HAMILTON, LL. D.,
On Legal Ethics.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
On General Practice and Exercises in Pleading and Evidence.

The thirty-sixth annual session opens on Wednesday, October 4, 1905, at 6.30 p. m., in the Law School Building, Nos. 506 and 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

The Secretary will be at his office in the Law Building daily from 4.30 to 6 00 p. m. for information, enrollment, payment of fees, etc.

Students proposing to connect themselves with the School are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1322 F street northwest, and at the W. S. Thompson Pharmacy, 708 Fifteenth street northwest, or upon application to the undersigned. S. M. YEATMAN,
37-4t Secretary.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

P. S. Riggs, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John S. Manning**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. HELEN P. MANNING, care of R. S. Riggs, 146 Broadway, New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,161. Administration. [Seal.] 38-3t

Digitized by Google

Legal Notices.

R. R. Horner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **David Lee**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. JULIA I. DAVIS, 1757 S st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,080. Administration. [Seal.] 38-3t

J. D. Coughlan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert E. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of September, 1905. JOHN D. COUGHLAN, 500 5th st. N. W.; DENNIS J. O'LEARY, 1825 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,137. Administration. [Seal.] 38-3t

J. A. Sweeney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles Ippolito**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. BENJAMIN W. GUY, 315 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,968. Administration. [Seal.] 38-3t

Fred L. Rosemond, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Ohio, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice V. C. Williams**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally, authenticated, to the subscribers, on or before the **14th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1905. J. W. CAMPBELL, Cambridge Ohio; FRED L. ROSEMOND, Cambridge, Ohio. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,317. Administration. [Seal.] 38-3t

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold the south 8.29 feet of lot 54, all of lot 55, the north 12.46 feet of lot 56, the south 14 feet of lot 57, and all of lots 58 and 59 in square 302, improved by seven houses numbered 2240, 2242, 2244, 2246, 2250, 2252, and 2254 Eleventh street Northwest, Washington, D. C., for ninety-eight hundred ($9,800) dollars cash, less 3 per cent brokerage commission, it is, by the court, this 19th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **19th day of October, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. [Seal]
Attest: Wm. C. Taylor, Deputy Register of Wills. 38-3t

Legal Notices.

[Filed September 18, 1905.]

A. Leftwich Sinclair, Attorney for the District of Columbia

In the Supreme Court of the District of Columbia,
Holding a Special Term as a District Court of the United States for the District of Columbia.
In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at **2 o'clock p. m. on the 31st day of October, A. D. 1905**, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 3 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: [Seal]
J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 38-6t

Evans Browne, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Napoleon J. T. Dana**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. MABEL LANIER TIDBALL, 210 Walnut st, Montclair, N. J. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,150. Administration. [Seal.] 38-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Halbert E. Paine**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of September, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,113. Administration. [Seal.] 38-3t

Digitized by Google

Legal Notices.

Saml. Maddox and H. Prescott Gatley

In the Supreme Court of the District of Columbia, H. Rozier Dulany, Trustee in Bankruptcy of Thomas E. Waggaman v. Thomas E. Waggaman et al. In Equity, No. 25,649.

The object of this suit is to sell a certain tract of land in the District of Columbia known and designated on the plats thereof as Woodley Park, as subdivided by Thomas E. Waggaman and John Ridout, trustees, and distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and to set aside as a preference under the bankrupt law a certain deed of trust, dated July 25th, 1904, and given by said trustees to secure notes held by the Catholic University of America, aggregating $876,168.96. On motion of the complainant, by his solicitors, Samuel Maddox and H. Prescott Gatley, it is by the court this 18th day of, September, A. D. 1905, ordered that defendants, **Eugene Ives, Emily A. Shuman, Kate M. Billings, Clara V. Dorsey, James L. McLane, Annie E. Bowie, and E. C. Humphrey,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court:
[Seal] HARRY M. CLABAUGH, Chief Justice.
True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 38-3t

Arthur R. Alexander, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Dorsey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. DANIEL W. O'DONOGHUE, 412 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,149. Administration. [Seal.] 38-3t

SECOND INSERTION.

Anson S. Taylor, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clinton Smith,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **14th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of September, 1905. ALICE M. SMITH, Conduit road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,119. Administration. [Seal.] 37-3t

Newton & Gillett, Solicitors

In the Supreme Court of the District of Columbia. Catherine A. Newton v. Thomas A. Valentine.
Equity No. 25,510.

The object of this suit is to have partition by sale of east fifteen feet of lot nine, in Davidson's subdivision of square one hundred sixty-three, in the city of Washington, District of Columbia. On the motion of the complainant it is, this 14th day of September, 1905, ordered that the defendant, **Thomas A. Valentine,** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Post and The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice.
[Seal]
True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-3t

Legal Notices.

Joseph R. Fague, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

In the Matter of the Estate of Richard A. Arnold, Deceased. Probate. No. 12,773.

On consideration of the petition of Richard W. and Frederick S. Emmons, executors of said Richard A. Arnold, it is by the Court, this 13th day of September, A. D. 1905, ordered that the sale of part of original lot numbered four (4), in square numbered nine hundred and twenty-five (925), in the city of Washington, District of Columbia, made by said executors to A. D. Butz, at and for the sum of thirty-five hundred dollars ($3,500.00), cash, subject to a commission of three (3) per cent on said amount, to the party making the sale, be ratified and confirmed, unless cause to the contrary be shown on or before the **15th day of October, A. D. 1905.** Provided a copy of this order be published in
[Seal] The Washington Law Reporter once a week for three (3) weeks before said last named day. ASHLEY M. GOULD, Justice. A true copy. Attest: M. J. Griffith, Deputy Register of Wills. 37-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Faunce,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of September, 1905. PHILIP P. FAUNCE, 814 8th st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,142. Administration. [Seal.] 37-3t

John L. Johnson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ellen M. Kennedy, Deceased.
No. 13,135. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Otho Sullivan, it is ordered, this 8th day of September, A. D. 1905, that notice be and hereby is given to **Thomas Sullivan, Julia McCarthy (nee Sullivan), William Morgan, Ellen Morgan, Mary Morgan, and Ellen Morgan (nee Sullivan), and their unknown heirs, alienees, devisees, and next of kin,** and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.
[Seal] Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-3t

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Virginia D. Corbit,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of September, 1905. GEORGE HELLEN, 1528 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,436. Administration. [Seal.] 37-3t

Digitized by Google

Legal Notices.

Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Heinrich W. F. Dukehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of September, 1905. JOHN WALDMAN, 609 7th st. N. W.; H. A. SCHEUERMAN, 7 Cst. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,010. Administration. [Seal.] 37-3t

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph Jefferson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,990. Administration. [Seal.] 37-3t

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Cassie Ann Butler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,991. Admn. [Seal.] 37-3t

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James Dowd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of September, 1905. JOHN J. BROSNAN, 482 La. ave.; T. PERCY MYERS, 486 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,069. Administration. [Seal.] 37-3t

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel Thomas Labby**, late of the District of Columbia, deceased All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of September, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,988. Admn. [Seal] 37-3t

Legal Notices.

R. B. Behrend, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Louis Esberg, Deceased.
No. 13,007. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Herman L. Karpeles, it is ordered this 12th day of September, A. D. 1905, that notice be and hereby is given to **Alfred I. Esberg, Herman Esberg, Gus Simon, Ida Graebeke, —— Simon, —— Neuberg, —— Katz, —— Katz, —— Katz, M. H. Esberg, Henry Esberg, Joster Esberg, Edith Esberg, and Solomon Esberg**, and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.
[Seal] ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-3t

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Caspar Morgenweck**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of September, 1905. LINA MORGENWECK, by Chas. H. Bauman, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,409. Admn. [Seal.] 37-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Phebe Holmes Lea**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of September, 1905. FREDERICK A. LEA, 1458 Bacon st., Wash., D. C.; AUGUSTUS S. CRANE, 227 Rahway ave., Elizabeth, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,157. Administration. [Seal.] 37-3t

THIRD INSERTION.

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alexander Melvi le Bell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under its hand this 30th day of August. 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,130. Admn. [Seal.] 36-3t

Digitized by Google

Legal Notices.

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Alice Bland McAboy, Deceased.
No. 13,131. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Theodore N. McAboy, it is ordered this 7th day of September, A. D. 1905, that notice be and hereby is given to **Louise B. Legge, Austin Brockenbrough, Fanny Compton Frere, Ella Beckwith Lawton, Elizabeth Beckwith, and Brockenbrough Beckwith,** and to all others concerned, to appear in said court on **Monday, the 9th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 36-3t

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.
Union Trust Company v. C. P. Storrs et al.
No. 25,642. Equity Docket No. 57.

The object of this suit is to ascertain the ownership of a certain sum of money on deposit in complainant's banking department to the joint credit of the defendants, R. Randolph Hicks and C. P. Storrs, complainant having been advised that each of said defendants is now claiming said fund to the exclusion of the other. On motion of the complainant, it is, this 6th day of September, A. D. 1905, ordered that the defendant, **C. P. Storrs,** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 36-3t

Coldren & Fenning, Solicitors

In the Supreme Court of the District of Columbia.
Jennie M. Payne, Complainant, v. Thomas E. Waggaman, James B. Nicholson, Samuel E. Allen, Jr., John Sherman, Ella B. Sherman, Irving Williamson, Lawrence P. Graham, Josephine Chamberlain, R. W. McPherson, M. A. McPherson, E. T. McPherson, Stephen McArdle, the President and Directors of Georgetown College, H. Rozier Dulaney, Samuel Waggaman, and the Catholic University of America, a corporation, Defendants.
In Equity. No. 24,987.

Fred G. Coldren and Irving Williamson, trustees, having reported to the court that they have sold the real estate described as lots numbered 15, 16, and 17, in block 6 of Thomas E. Waggaman's subdivision of "Rosedale," now known as "Cleveland Park," as per plat recorded in the office of the surveyor for the District of Columbia, in liber county 9, folio 71, at public auction, to Oscar Luckett, as trustee for Josephine Chamberlain and the other holders of the notes secured by the first deed of trust on said property as shown by the amended bill herein, for the sum of $7,500, it is this 7th day of September, 1905, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of October, A. D. 1905.** Provided, a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. By the Court. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clk. [Seal] 36-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Legal Notices.

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Ellen Thompson,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 29th day of September, 1905, at 10 o'clock A. M.,** as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of September, 1905. CHARLES W. FLOECKHER, by R. Preston Shealey, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,346. Administration. [Seal.] 36-3t

H. H. Glassie and A. George Maul, Solicitors

In the Supreme Court of the District of Columbia.
Ross W. Morrison, Complainant, v. Annie E. Morrison, George L. Devers, Co-respondent, Defendants.
In Equity. No. 24,067.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 30th day of August, A. D. 1905, ordered that the defendant, **George L. Devers,** cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Times for three consecutive weeks prior to said day for once in each week. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 36-3t

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William G. Zimmerman,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of September, 1905. JOHANNA M. ZIMMERMAN, 912 8th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,146. Administration. [Seal.] 36-3t

FIFTH INSERTION.

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.
Gilbert J. Osterman et al. v. Robert E. Poole et al.
No. 25,518. Equity.

The object of this suit is to perfect complainants' title to sublots 103 to 114, inclusive, square 104, Washington, D. C. On motion of the complainants, it is, this 10th day of August, A. D. 1905, ordered that the defendants, **Robert E. Poole, Susan Erwin, and Ann Council,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, **the unknown heirs, devisees, and alienees of Martin Casner, of Martin Kershner, of Margaret Freeman, of Charles W. Goldsborough, and of Charles Henry Goldsborough,** cause their appearance to be entered herein on or before the rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the month following the first publication of this order, and twice a month for the two succeeding months, in The Washington Law Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clk.
au 11,18,25; sept. 8,22; oct. 13,27

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No 39

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - SEPTEMBER 29, 1905

CONTENTS.

Editorial 609
SUPREME COURT OF NEW YORK:
Emma Walker, appellant-respondent, v. Lyman A. Best, respondent, and William H. Maxwell, appellant 610
Notes of Cases 612
Court of Appeals Calendar 617
Legal Notices 620

Assistant Corporation Counsel Henry P. Blair.

The announcement of the appointment of Mr. Henry P. Blair to fill the vacancy in the position of first assistant to the corporation counsel has been received with exceptional favor, as it is generally conceded that a better selection for this important office could not have been made. The appointment is based entirely upon merit, as Mr. Blair was not an applicant for the position, and his name had not appeared among those mentioned in connection therewith.

Mr. Blair is a native of New Hampshire, and a son of former United States Senator Henry W. Blair, of that State. He was graduated from Dartmouth College in 1889, and from the Columbian Law School in 1892. For several years he was connected with the office of the late Henry Wise Garnett, a prominent member of the bar of this District; and after the death of Mr. Garnett, in 1897, formed a partnership with Mr. Corcoran Thom, under the firm name of Blair & Thom, which has since continued.

Mr. Blair is an able lawyer, and admirably equipped for the responsible duties of his new position. His knowledge of the law is thorough and accurate, and he has had much experience in the trial of cases. That he will be a valuable accession to the office of the corporation counsel can not be doubted; and not only the Commissioners and Corporation Counsel Thomas, but the entire community, are to be congratulated that, even at the cost of a personal sacrifice, he has consented to accept the appointment.

Mr. Blair has been for some years a member of the faculty of the George Washington University Law Department, lecturing on torts, domestic relations, and personal property, and this year will begin a series of lectures on sales.

Changes in the Office of the United States Attorney for This District.

Mr. Charles A. Keigwin, for some time an assistant in the office of the United States attorney for this District, has resigned and will devote his attention to private practice. In accepting his resignation United States Attorney D. W. Baker pays a deservedly high tribute to the ability and faithfulness with which Mr. Keigwin has discharged his duties in connection with the office. Mr. Keigwin has participated in the trial of some of the most important cases disposed of during the administration of the office by Mr. Morgan H. Beach, and his work has been the subject of very general commendation.

The vacancy caused by his resignation has been filled by the appointment of Mr. Stuart McNamara to the position. Mr. McNamara is a young lawyer of fine ability, and will doubtless prove a valuable addition to the office force. He is a native of this District and a graduate of both the academical and law departments of the Georgetown University. His career in the law school was exceptionally brilliant, having attained first honors in each of his classes. He has been quite successful since his admission to the bar, and has achieved a reputation as a writer on legal subjects.

The appointment is also announced of Mr. Rudolph Yeatman as private secretary to the United States attorney. Mr. Yeatman is also a native of this District, and is at present a student in the Georgetown University law school. He has for some years been connected with the office of Lambert & Baker, and is considered a capable stenographer and clerk.

No further changes in the office force are at present contemplated. Assistant Attorney Charles H. Turner will be specially assigned to Criminal Court No. 1, and Assistant Attorney J. S. Easby-Smith to Criminal Court No. 2. Mr. Easby-Smith will also represent the office in the several cases in the Court of Appeals in which Mr. Baker is disqualified by reason of his having been counsel for the appellants in the court below.

Mental anguish because of inability to work and properly to support his child is held, in Maynard v. Oregon R. & Nav. Co. (Ore.), 68 L. R. A. 477, not to be a proper element of damages to be allowed one injured in a railroad accident.

Digitized by Google

Supreme Court of New York—Appellate Division.

SECOND DEPARTMENT.

EMMA WALKER, APPELLANT-RESPONDENT,

v.

LYMAN A. BEST, RESPONDENT, AND WILLIAM H. MAXWELL, APPELLANT.

LIBEL; PRIVILEGED COMMUNICATIONS.

Where writings are not libelous in themselves there can be no recovery at all unless pecuniary injury has been sustained by reason of the publication, and there can be no recovery of punitive damages in the absence of express malice, that is, malice in fact as distinguished from malice implied.

An official report prepared by defendant B., the principal of a school in which plaintiff taught, stating, among other things, that plaintiff was "careless" in a portion of her work, and a communication by defendant M., superintendent of schools, relating to such report and plaintiff's work, both held privileged.

Decided September, 1905.

APPEAL by the plaintiff, Emma Walker, from portion of a judgment of the Supreme Court in favor of the defendant, Lyman A. Best, and by the defendant William H. Maxwell from portion of said judgment in favor of the plaintiff, and from orders denying the plaintiff's and the said defendants' motions for a new trial made upon the minutes.

Samuel Walker for the plaintiff as appellant and respondent; *J. Edward Swanstrom* (*Conrad Saxe Keyes* with him on the brief) for respondent Best and appellant Maxwell.

HIRSCHBERG, P. J.—As the learned trial justice said in charging the jury, "there are here two cases which are entirely separate, one against Mr. Maxwell and one against Mr. Best." They were tried as one, and will be so considered on the appeal, the point not having been raised that a joint action only lies where joint liability exists.

The plaintiff is a teacher in one of the public schools of the borough of Brooklyn. The defendant Best is her principal and the defendant Maxwell is the city school superintendent. In the complaint it is charged that the defendant Best on October 5, 1900, libeled the plaintiff by stating in an official report that she was "careless" in blackboard work, and that the defendant Maxwell, on March 30, 1901, libeled her by writing a letter in which he stated in reference to such report that he "never had any doubt that Mr. Best's estimate (of the plaintiff) is pretty nearly correct." No special damage was alleged or proven. Neither defendant appears to have been connected in any way with the alleged libel charged against the other. The jury found in favor of the defendant Best, but against the defendant Maxwell in a substantial amount, and the plaintiff and the defendant Maxwell appeal from so much of the judgment entered on the verdict as is adverse to each respectively.

The court charged the jury in substance that the report made by the defendant Best was privileged, and that in order to recover damages from him the plaintiff must establish that in it he had depreciated her below his true conception of her merit, and that he had done so with the intent of injuring her chances for preferment. The verdict of the jury exonerated Mr. Best and justifies his report as an honest and unprejudiced estimate of the plaintiff as a teacher at the time it was made. I do not see how any other conclusion could have been reached. The report records the plaintiff's school work as good in many particulars; no fault seems to have been found with it by the plaintiff, excepting as to the allegation charging carelessness in the blackboard work; and the evidence nowhere suggests actual malice in its preparation or publication.

The report, indeed, is but the common, ordinary affair of modern school life. Its good faith has not been successfully impugned; it bears no obvious imprint of malice; it is not unkind in tone; it is not unjust in substance; it was not inspired by ill will; it has wrought no financial harm. But the same jury which has thus relieved Mr. Best from all suspicion of blame in the making of the report has found against Mr. Maxwell for his expression of confidence in its correctness; a curious result, which possibly may have been due to some extent at least to the difference in the rules of law applied by the court to the two defendants. The court charged the jury that Maxwell's letter was not privileged, but that, on the contrary, "it was a purely unnecessary, gratuitous, and uncalled-for letter." He charged that as to Best's report the burden was on the plaintiff to prove her cause of action, while as to Maxwell's letter the burden was on him to justify it. Throughout the trial he ruled that there was no evidence in the case from which an inference of actual malice on the part of Maxwell could be deduced. And at the very end of the case when Maxwell was testifying he said "there isn't the slightest evidence of malice on the part of this witness, except what may be inferred from the character of the letter he wrote. . . . There isn't a shade of evidence of express malice." In the opinion written on the motions for a new trial, however, he wrote in reference to the case against Maxwell "there was ample evidence of actual malice."

And he told the jury in his charge to them in substance that they were at liberty to find punitive damages against Maxwell; that "in all cases where the right to recover involves a finding of malice on the part of the defendant, the jury have a right to give punitive damages; that is, damages to punish; that they have a right to add something to compensation by way of punishment, and this is one of those cases, if you conclude that she is entitled to recover at all." It is true that this part of the charge was addressed to the case against Best, but all that he said on the subject of the rule as to damages as against Maxwell was that "as to the damages, the rule I have given you in the other case will apply to this." The charge was erroneous. Where writings are not libelous in themselves, there can be no recovery at all unless pecuniary injury has been sustained by reason of the publication (Bassell v. Elmore, 48 N. Y. 561; Beecher v. Press Publishing Co., 60 App. Div. 536; King v. Sun Printing and Publishing

Digitized by Google

Asso., 84 id. 310); and there can be no recovery of punitive damages in the absence of express malice; that is, malice in fact as distinguished from malice implied (Krug v. Pitass, 162 N. Y. 154, 160).

I think that both writings were privileged; that neither was libelous per se, and that in the absence of any claim of special injury the complaint should have been dismissed as to both defendants. It was clearly the duty of the defendant Best, as principal of the school in which the plaintiff teaches, to note and to record her work and his opinion of her capacity and skill, and the offense attaches to an unfavorable expression which is believed to be truthful and honest.

Moreover, the charge of carelessness is not libelous as might be a charge of unskillfulness or general incapacity. History furnishes many instances of genius wasted by a life of carelessness and indifference. The plaintiff is not necessarily injured in her profession by a charge of carelessness in the performance of a particular branch of her work. The case of Mattice v. Wilcox (147 N. Y. 624), cited by the learned trial justice in the opinion heretofore referred to, was a case wherein the charge was one of general professional incapacity. But, as was said by Mr. Justice Hatch in Ratzel v. N. Y. News Pub. Co. (67 App. Div. 598), where the plaintiff was accused of "a general careless manner of attending to our business" (p. 600): "This does not state, either directly or by inference, that the plaintiff was unfitted, unskilled, or incompetent. He might be possessed of the highest degree of skill in his particular department, and still be careless in the performance of his duties. The averments of the complaint seek to show that the use of the words 'careless manner' necessarily implied that the plaintiff was unfitted, unskilled, and incompetent. On the contrary, such words are entirely consistent with the fact that the plaintiff was fitted, skilled, and competent, and there is nothing either in the alleged libelous matter, or in the pleading itself, which can in any way be construed to mean that the defendant charged the plaintiff with being unfitted, unskilled, or incompetent. Consequently there is nothing made to appear by the pleading upon which a libel may be founded, or that the use of these words injured the plaintiff in his trade, business, or calling." In Battersby v. Collier, 34 App. Div. 347, 354, the court said: "Nothing can be said to be libelous of a man in his profession except something which degrades or lowers him in his professional character generally, and it is not a libel of one in that regard to say that, in any particular work, he has fallen below the proper standard or has made a failure."

The learned counsel for the plaintiff conceded on the argument that the report was not libelous per se, but claimed that the letter of the defendant Maxwell was so. The claim is inconsistent with the concession. It can not be that a written expression of confidence in the accuracy of a report is libelous if the report itself is not so. The report was made to Maxwell as being in a sense the official head of the city schools. The letter was written by Maxwell in response to one which had been sent to him in the plaintiff's interest, and at her request, by Edward G. Ward, the borough superintendent of schools, calling attention to an alleged conflict between the opinion expressed in the report in question and one made shortly before by the same principal. Shortly afterwards Ward wrote to Maxwell, withdrawing the complaint, and saying in that letter in reference to the first one: "I wish to say that I desire the said letter to be regarded as if it had never been written, as I have just had an interview with Mr. Best, during which he has given me a full and adequate explanation of the apparent discrepancies in his reports. Clearly I was too precipitate in my action, and I very much regret having been so." It was in reply to this second letter that the communication was written which is sought to be made the basis of the action against Maxwell.

The relation of the parties to the subject-matter of the correspondence invests the communication with a privileged character. It is not shown to be untruthful in any respect, or to have been written in bad faith or from unworthy motives. On its face it is only a qualified approval of the approximate correctness of Mr. Best's report, and the plaintiff admits through her counsel on the argument that it would not be regarded as libelous, but for the assertion of the writer that he had known her for some years. She testified that this official acquaintance was at least of six years' duration, but aside from that consideration it certainly is not libelous per se for the superintendent of schools to claim in writing to be acquainted with one of the teachers in his charge.

The rule of privilege is reasonably well settled. Each of the parties to the correspondence in question had an official interest in the accuracy of Mr. Best's report. In Lewis and Herrick v. Chapman, 16 N. Y. 369, 373, Judge Selden said: "Where both parties, i. e., the party making as well as the party receiving, have an interest in the communication, it has never been doubted that it was privileged." The rule has been frequently reiterated in the Court of Appeals. See Van Wyck v. Aspinwall, 17 N. Y. 190; Klinck v. Colby, 46 id. 427; Byan v. Collins, 111 id. 143. And in Decker v. Gaylord, 35 Hun, 584, it was held that oral communications made in good faith and in a proper manner to a school commissioner by a resident of the district charging a teacher with obscenity and unchastity are privileged; that the presumption is that the person mailing such a communication is acting in good faith, and the burden of proving that he acted with actual malice rests upon the party seeking to hold him liable for slander, and that the falsity of the charge is not of itself sufficient to raise an inference of malice. The rule differs somewhat, of course, in cases of libel, but the general principle of privilege applies in either case.

The judgment in so far as appealed from by the plaintiff and the order denying her motion for a new trial should be affirmed, with costs to the defendant Best, and the judgment in so far as appealed from by the defendant Maxwell and the order denying his motion for a new trial should be reversed and a new trial granted, costs to abide the event.

All concur.

Digitized by Google

Personal Injury—Contributory Negligence—Promptness in Leaving Car.

In Philadelphia, etc., Railroad Company v. Hand, decided recently by the Court of Appeals of Maryland, the plaintiff was thrown from the platform of a railroad car and injured. The trial court granted an instruction requested by the plaintiff which in effect told the jury that the contributory negligence of the plaintiff "must be proved by the defendant;" and refused an instruction requested by defendant to the effect that it was the duty of the plaintiff to leave the train with reasonable promptness upon its arrival at her destination, and that if she was negligent in this respect, and such negligence contributed in any degree to cause the accident, she could not recover. In holding both of these rulings to be erroneous, the Court of Appeals, by Chief Judge McSherry, says:

There is one bill of exceptions in the record now before us, and the only questions presented by it for review are the rulings made by the trial court on the prayers for instructions to the jury. The suit was brought by the appellee, Sophia B. Hand, against the appellant, the Philadelphia, Baltimore, and Washington Railroad Company, to recover damages for a personal injury sustained by the appellee.

The facts which need be stated and about which there is no controversy can be briefly set forth; but there is one particular that will be noticed presently in which there is a contest as to a presumption arising from them. On June the 26th, 1903, the appellee and her husband purchased from the appellant company's ticket agent at Havre de Grace round trip tickets to Baltimore and return. They went to Baltimore, and on the afternoon of the same day they took a train on the appellant's road in the last-named city to go back to their home. They reached Havre de Grace shortly after 5 o'clock p. m. When the train stopped at the station the appellee and her husband arose from the seat which they occupied and proceeded towards the front door of the car to alight therefrom. There were several persons in advance of them, and the appellee followed closely behind her husband. Whilst the persons in advance of the appellee's husband were descending the car steps he passed over the rear platform of the car immediately in front of the one in which he and his wife had been riding, and descended the steps of that car so as to get on the station platform before the appellee alighted, and so as thereby to be able to assist her in alighting. Before she stepped down from the car platform the train lunged forward some five or six feet, and then suddenly stopped, whereby the appellee was thrown from the car platform, down the car steps on to the station platform and, according to the testimony, was considerably hurt and injured.

Upon this state of facts the appellee asked eight instructions and the appellant requested the court to give three. All of the prayers of the appellee, except the eighth, were granted; whilst the first and second of the appellant were also granted. The case then went to the jury and a verdict was returned for the appellee and upon the verdict a judgment was subsequently entered. From that judgment this appeal has been taken.

We need not set out the first, second, third, and fourth instructions given at the instance of the appellee, because they are almost literal transcripts of those which were granted in the case of Anderson v. P., W. & B. R. R. Co., 72 Md. 519. As they were held in that case to be free from objection, it is unnecessary to discuss them again. The fifth instruction, however, is obviously erroneous. By it the jury were told that they "were not entitled to presume that the plaintiff was guilty of negligence, but that fact, if relied upon by the defendant, must be proved by the defendant by preponderating testimony, and if the jury find that if their minds are in a state of equipoise as to whether she was guilty of negligence or not, then in such event they can not find that she was guilty of negligence."

In the Anderson case, there was an instruction to the effect that in order to defeat a recovery on the ground of contributory negligence on plaintiff's part, the defendant must satisfy the jury by preponderating evidence of two facts; first, that the plaintiff was negligent; and secondly, that such negligence directly contributed to the injury. The same instruction was given in the case at bar.

It is manifest that the fifth instruction is a radical expansion of the principle asserted in the Anderson case. Under the principle there asserted the defendant could rely upon the plaintiff's own evidence, or the evidence adduced by the plaintiff's witnesses to prove contributing negligence, and from that source alone might satisfy the jury of the existence of the two requisite facts above indicated.

But under the fifth instruction given in the pending case, contributing negligence, to be available, "must be proved by the defendant," even though the plaintiff has conclusively established the fact that it did exist and did directly occasion the injury constituting the cause of action. The instruction introduces a new doctrine in the law of negligence.

Heretofore, certainly in this jurisdiction, and we imagine in every other where negligence is not apportioned, if the plaintiff is making out a case distinctly and clearly showed that his own negligence directly contributed to the happening of the injury which befell him, the defendant was under no obligation to adduce any evidence at all, but might satisfy the court or jury from the plaintiff's own showing that contributing negligence barred a recovery.

If the instruction we are now reviewing is sound, this can no longer be done; for even though the plaintiff may by establishing his own contributing negligence, prove himself out of court, the defendant will still be responsible unless it can adduce evidence to establish what has already been proved, viz, contributing negligence; because under this instruction contributing negligence to be available as a defense "must be proved by the defendant."

Contributory negligence will defeat a plaintiff's action. It can, therefore, make no possible difference whether that negligence is proved

Digitized by Google

by the plaintiff or by the defendant. It is its existence, and not the party by whom its existence is proved, that is material. It is the thing itself that defeats the action, and not the mere accident that it happens to be proved by the one or the other of the opposite parties. It is just as complete a bar to the action when its presence is revealed in the evidence introduced by the plaintiff as it is when disclosed in the testimony adduced by the defendant.

Inasmuch, then, as the negligence of the plaintiff directly contributing to the happening of the injury sustained bars a recovery, it would seem a priori to follow that it is absolutely of no consequence by which party to the suit that negligence is proved. Consequently, it was error to instruct the jury that to be a defense such negligence must be proved by the defendant.

The error just indicated is not cured by any other instruction. If the fifth instruction, which embodies the above-mentioned error, were in conflict with other instructions, that fact would, of itself, constitute a ground for reversing the judgment. B. & O. R. R. Co. v. Blocher, 27 Md. 277. If there is no such conflict there is no modification or correction of the error.

It is true the sixth introduction after setting forth certain facts hypothetically defines the right of the plaintiff to recover, "unless the jury believe from the evidence that she was guilty of want of ordinary care, and that such want of ordinary care was a direct cause of her injury."

But this in no way changed the principle laid down in the fifth instruction. The two are in accord. By the sixth the jury were told that contributing negligence would defeat the action, but by the fifth they were instructed that the contributing negligence which would so defeat the action must be proved by the defendant.

We come now to the appellant's third prayer. It was rejected because there was, in the judgment of the trial court, no evidence to support its hypothesis of facts. By it the appellant asked the court to say to the jury that "it was the duty of the plaintiff to leave the train upon which she was riding upon its arrival at Havre de Grace with reasonable promtness, and that if she was negligent in this respect, and such negligence directly contributed in any degree to cause the accident complained of, that then the plaintiff is not entitled to recover in this case, and their verdict should be for the defendant."

There can be no doubt it was the duty of the plaintiff to leave the train with reasonable promptness, and a failure by her to perform that duty would constitute negligence on her part, unless her tardiness in this respect were shown to be excusable. If her alleged negligence in this particular directly contributed to the injury she received, then, of course, there was no cause of action.

But it is said there was no evidence to show that the appellee was dilatory in leaving the train. It may be conceded that there was no direct evidence on that subject; but there were circumstances from which the jury might have legitimately inferred that she was not reasonably prompt in alighting. It does not appear that there was any other passenger behind her; there were several in advance of her. Those who were in advance of her had all alighted and had walked entirely off of the station platform and were no longer in sight before the appellee started to descend the car steps. The jury might well have inferred that if the other ladies who preceded her out of the car had time enough to do so, and in addition had time to walk wholly away from the station platform before the appellee attempted to alight, that she delayed for an unreasonable time to leave the car.

It was clearly a matter for the jury to determine, because from the facts alluded to an inference might well have been drawn by them that the appellee did not leave the train with reasonable promptness.

We have made no allusion to the appellee's seventh instruction because it relates only to the measure of damages and is not open to criticism.

We hold that there was error in granting the appellee's fifth instruction and in refusing to grant the appellant's third prayer. Because of those errors the judgment must be reversed and a new trial will be awarded.

Evidence—Res Gestæ—Statement by Train Conductor.

In Northern Pacific Railway Company v. Kempton, decided by the United States Circuit Court of Appeals for the Ninth Circuit, 138 Fed. 992, the action was to recover damages alleged to have been sustained by the negligence and delay of the defendant in the transportation of certain live stock. A conductor in the employ of the defendant, in response to a question by the plaintiff during the transportation, "Why don't you get over the road?" replied, "I can't get anywhere with this dummy. They should have known better than to send it out this kind of weather." It was held that the statement was admissible as part of the res gestæ. The court said in part:

The question at issue in the case was whether there was any unreasonable delay in moving the train containing the cattle. The defendant was charged with negligence in attaching plaintiff's cars to a train that proceeded at a slow rate of speed and stopped at many stations. The defendant denied that it had been guilty of the negligence charged. The statement of the conductor was made in the midst of the act complained of, reflecting light upon its quality and character, and under the general rule was part of the res gestæ. As said by Mr. Justice Cooley in Sisson v. Cleveland R. Co., 14 Mich. 489, 90 Am. Dec. 252: "The statements . . . were made while the conductor was engaged in the business of the defendants in respect to the contract in question, and had control of the train, and they related to the delay complained of, which was the res gestæ of the case."

The declaration of a servant while engaged in enforcing the regulations of a steamboat company concerning passengers, with respect

Digitized by Google

to which complaint was made that the regulation was being enforced with unnecessary or cruel severity, was held to constitute a part of the res gestæ. New Jersey Steamboat Co. v. Brackett, 121 U. S. 637, 649; 7 Sup. Ct. 1039; 30 L. Ed. 1049. Where a railroad employee has been injured by the movement of cars about which he was at work, statements of the conductor of the train, made almost immediately, and while the cars were moving or had just stopped, and while the injured man was bleeding from the injury at that moment received, describing his own part in bringing about the motion that effected the injury, were held to be admissible as part of the res gestæ. Pierce v. v. Van Dusen, 78 Fed. 693, 706; 24 C. C. A. 280 (Circuit Court of Appeals, Sixth Circuit, opinion by M. Justice Harlan). A conversation of a conductor with a passenger who expressed fear of a fellow passenger, as to the latter's sanity, being in discharge of the conductor's duty to the passenger, was held admissible as part of the res gestæ in an action against the railroad company for the killing, shortly after such conversation, of another passenger by the person whose sanity was questioned. St. Louis, I. M. & S. Ry. Co. v. Greenthal, 77 Fed. 150, 152; 23 C. C. A. 100 (Circuit Court of Appeals, Eighth Circuit, opinion by Judge Caldwell). These and other similar cases indicate the scope of the rule as established by the courts, under which we think the evidence was properly admitted.

Action on Note—Parol Evidence.

[New York Law Journal.]

In Graham v. Remmel, decided by the Supreme Court of Arkansas in June, 1905 (88 S. W. 899), it was held that where an application for insurance was accompanied by a note for the premium, both of which were delivered in due form to the agent of the insurer, parol evidence was admissible in an action by the agent on the note to show that the plaintiff requested that defendants execute the note as evidence of their good faith, but not to be binding on them unless the policy, when it arrived, was satisfactory and they accepted it. The court said in part:

In Ware v. Allen (128 U. S. 590), the Supreme Court of the United States held: "Parol evidence is admissible in an action between the parties to show that a written instrument executed and delivered by the party obligor to the party obligee, absolute on its face, was conditional, and was not intended to take effect until another event should take place." Following Ware v. Allen, the Supreme Court of the United States, in Burke v. Dulaney (153 U. S. 228, 14 Sup. Ct. 816, 38 L. Ed. 698), carried the application of the dictum into a case identical in principle and analogous in fact with the one at bar. Mr. Justice Harlan, for the court, said:

"And the evidence offered by the appellant and excluded by the court did not in any true sense contradict the terms of the writing in suit, nor vary their legal import, but tended to show that the written instrument was never in fact delivered as a present contract, unconditionally binding upon the obligor according to its terms from the time of such delivery, but was left in the hands of Dulaney, to become an absolute obligation of the maker in the event of his electing, upon examination or investigation, to take the stipulated interest in the property in question. In other words, according to the evidence offered and excluded, the written instrument upon which this suit is based was not —except in a named contingency—to become a contract or promissory note which the payee could at any time rightfully transfer. Evidence of such an oral agreement would show that the contingency never happened, and would not be in contradiction of the writing. It would prove that there never was any concluded binding contract, entitling the party who claimed the benefit of it to enforce its stipulations. The exclusion of parol evidence of such an agreement could be justified only upon the ground that the mere possession of a written instrument, in form a promissory note, by the person named in it as payee, is conclusive of his right to hold it as the absolute obligation of the maker.

"While such possession is undoubtedly—prima facie, indeed, should be deemed—strong evidence that the instrument came to the hands of the payee as an obligation of the maker, enforceable according to its legal import, it is open to the latter to prove the circumstances under which possession was acquired, and to show that there never was any complete, final delivery of the writing as the promissory note of the maker, payable at all events and according to its terms. The rule that excludes parol evidence in contradiction of a written agreement presupposes the existence in fact of such agreement at the time suit is brought. But the rule has no application if the writing was not delivered as a present contract." After citing many authorities supporting these views, the court concluded: "For the reason stated, and without considering the case in other aspects, we are of the opinion that it was error to exclude the evidence offered by the defendant tending to show that the writing sued on was not delivered to or received by Dulaney as the promissory note of the defendant, binding upon him as a present obligation, enforceable according to its terms, but was delivered to become an obligation of that character when, but not before, the defendant examined, and by working them tested, the mining properties purchased by the plaintiff, and elected to take the stipulated interest in them.

According to the evidence so offered and excluded, the writing in question never became, as between Burke and Dulaney, the absolute obligation of the former, but was delivered and accepted only as a memorandum of what Burke was to pay in the event of his electing to become interested in the property; and from the time he so elected, or could be deemed to have so elected, it was to take effect as his promissory note, payable according to its terms. His election within a reasonable time to take such interest was made a condition precedent to his liability to pay the stipulated price. The minds of the parties never met upon any other basis, and a refusal to give effect to their oral agreement would make for them a contract which they did not choose to make for themselves."

Following these authorities, and approving the reasoning in Burke v. Dulaney, above

Digitized by Google

quoted, the court is of opinion that the Circuit Court erred in excluding the evidence offered and directing a verdict. The evidence raised an issue of fact determinable by the jury.

Imputed Negligence of Parent or Guardian.
[New York Law Journal.]

The decision of the Supreme Court of Minnesota in Mattson v. Minnesota & N. W. R. Co. (July, 1905, 104 N. W. 443), is of especial interest in the State of New York, because the Minnesota court disapproves of a doctrine which is quite well settled in New York, expressly overruling a previous Minnesota decision which followed New York cases. It was held inter alia that in an action brought by a child non sui juris for injuries to his person caused by the negligence of defendant, the contributory negligence of his parent or guardian will not be imputed to him (Fitzgerald v. Railway Co., 13 N. W. 168, 29 Minn. 336, 43 Am. Rep. 212, overruled), and that the negligence of the parent will bar an action by him for loss of services, but not an action by or in behalf of the infant. The action was prosecuted for the benefit of an injured child and on the point in question the Minnesota court said:

It is also urged that plaintiff, the injured boy's father, was guilty of contributory negligence; that he knew that his boys had been frequenting the railroad premises, had obtained dynamite therefrom, and wholly neglected to take adequate steps to keep them away and failed to inform defendant that they had obtained dynamite therefrom; hence that he was guilty of such negligence as will bar recovery in this action, brought for the benefit of the injured boy. It may be conceded that plaintiff was guilty of contributory negligence, as contended by defendant, but as his negligence can defeat a recovery only by imputing it to the injured son, as held in Fitzgerald v. Railway Co. (29 Minn. 336, 13 N. W. 168, 43 Am. Rep. 212), we take this occasion, the question being squarely presented by the facts, to reconsider the rule announced in that case. It was there held that negligence of a parent having the care of an infant non sui juris, which contributes with the negligence of a third person to produce injury to the child, bars recovery by the latter. The decision was by a majority of the court, and was based upon what was regarded sound principle. There has been much discussion of this question by text writers and judges, and the courts have not agreed thereon.

A number of the States have adopted the reasoning of the leading New York case of Hartfield v. Roper (21 Wend. 615, 34 Am. Dec. 273), and held to the doctrine as announced by this court in the Fitzgerald case, while other States, following the lead of the Supreme Court of Vermont in Robinson v. Cone (22 Vt. 213, 54 Am. Dec. 67), utterly repudiate the doctrine as unsound in principle and at variance with the general rules of law applicable to the rights of infants. It is said in 4 Current Law, 778, that by weight of modern authority negligence of a parent or custodian is not imputable to a child non sui juris, so as to bar an action brought on its behalf, and the authorities in support of the statement are there cited. Bishop, in his work on Non-Contract Law, says that the doctrine of imputed negligence, whereby an infant loses his suit, 'not only where he is negligent himself, but where his father, grandmother, or mother's maid is negligent, is as flatly in conflict with the established system of the common law as anything possible to be suggested.' The law, says the writer, never took away a child's property because his father was poor or shiftless, or a scoundrel, or because anybody who could be made to respond to a suit for damages was a negligent custodian of it.

But by this doctrine, "after a child has suffered damages, which confessedly are as much his own as an estate conferred upon him by gift, and which he is entitled to obtain out of any one of several defendants who may have contributed to them, he can not have them if his father, grandmother, or mother's maid happens to be one making a contribution." The writer concludes that the "law's established reasons" do not to any extent sustain the doctrine. The rule is criticised and declared obnoxious to sound principles by Beach in his work on Contributory Negligence, 3d ed., sec. 127 et seq., and by Judge Jaggard in his work on Torts, 2 Jaggard on Torts, 985. These criticisms are sustained by a vast majority of the courts, State and Federal. The authorities will be found cited in the works referred to and in 7 Am. & Eng. Ency. of Law, 2d ed., 448 et seq. See also Berry v. Railway Co., C. C., 70 Fed. 679; Battishill v. Humphreys, Mich., 31 N. W. 894, and Westbrook v. Railway Co., Miss., 6 South. 321, 14 Am. St. Rep. 587, where the subject is ably discussed and the authorities reviewed.

We have given the matter very serious consideration, with the result that in our opinion the doctrine of the Fitzgerald case is unsound, at variance with elementary principles of the law respecting the rights of infants, and should be overruled. The right of an infant to damages for injuries to his person caused by the wrongful act of others is a property right and entitled to the same protection in the courts as is accorded other property held or owned by him. He is entitled to the protection of the law equally with persons who have attained their majority, and to refuse him relief on the ground of his parents' indifference or negligence would be to deny it to him. To impute to him negligence of others is harsh in the extreme, whether the negligence so imputed be that of his parents, their servants, or his guardian. He is a citizen within the meaning of the law of the land and entitled to such rights and privileges as are appropriate to his class, and to the equal protection of the law. Though the Fitzgerald case has remained undisturbed many years as the law of this State, the rule there laid down is not a rule of property; no rights will be affected by a departure from it, for no one has a vested right to negligently cause injury to another, and we have no misgiving as to consequences in setting the court right on this important question, and placing it in line with the weight of modern thought. If it had become a rule of property we would not disturb it, but not being such, and being clearly wrong in principle and contrary to sound policy, it should not be longer adhered to. Ganser v. Ganser, 83 Minn. 199, 86 N. W. 18, 85 Am. St. Rep. 461.

Digitized by Google

Interstate Rendition of Paroled Convict.
[New York Law Journal.]

The law is quite well settled that an ordinary convict who has escaped and is found in another State may be returned by extradition to serve out his unexpired term. Dolan's case, 101 Mass. 219; Holton v. Hopkins, 21 Kan. 638; In re Hope, 10 N. Y. Supp. 28. The recent case of Hughes v. Pflanz, jailer, applies the same principle to the case of a convict sentenced to a reformatory and allowed to go out on parole. This decision was by the United States Circuit Court of Appeals, Sixth Circuit, and it adds the authority of the Federal tribunal to that of the Supreme Court of Errors of Connecticut in Drinkall v. Spiegel (68 Conn. 441), where the same question came up. A convict was allowed to go outside of the New York Reformatory on parole, as permitted by the statutory regulations of such reformatory, on his promise to comply with the terms of the parole which, among other things, directed that he go to Michigan, where employment had been procured for him. He went instead into Connecticut, and it was held by the Connecticut court that he was a fugitive from justice within the meaning of section 2 of article 4 of the Federal Constitution and as such might be surrendered to the New York authorities. The following language from the opinion of the Circuit Court of Appeals in Hughes v. Pflanz sufficiently states the argument in favor of the position taken in both cases:

"The term 'charged with crime,' as used in the constitution and statute, seems to us to have been used in its broad sense and to include all persons accused of crime. It would be a very narrow and technical construction to hold that after the accusation, and before conviction, a person could be extradited, while after conviction, which establishes the charge conclusively, he would escape extradition. The object of the provisions of the constitution and statute is to prevent the escape of persons charged with crime, whether convicted or unconvicted, and to secure their return and punishment if guilty. Taking the broad definition of 'charged with crime' as including the responsibility for crime, the charge would not cease or be merged in the conviction, but would stand until the judgment is satisfied. It would include every person accused, until he should be acquitted, or until the judgment inflicted should be satisfied. Any other construction would prevent the return of escaped convicts upon the charge under which they had been sentenced, and defeat in many instances the ends of justice."

Contract—Time for Performance—Specifying Day for Performance.

Where a contract by its terms is to be performed on a day named, both parties have the whole of the business day in which to tender performance. Plaintiff entered into a contract with defendant for the purchase of a vessel, title to which was to be transferred at a place and on a day stated, together with her "unexpired insurance fully paid." Plaintiff was at the same time and place to make payment in accordance with the terms of the contract. In an action for breach of the contract, it was shown that plaintiff's agent and defendant met at the designated time and place in the forenoon, when defendant stated that he had obtained assignment of some of the insurance policies, but other underwriters refused to transfer, and he offered to obtain new insurance for the deficiency, or new insurance for the entire amount, for the unexpired term of the old policies. There was evidence on behalf of defendant that after some discussion plaintiff's agent went out, stating that he would return at 2 o'clock; also that defendant could have procured the required insurance, and otherwise complied strictly with the terms of the contract before the close of the day, but no formal tender of full performance was made. Held, as determined on a prior hearing, that the insurance offered, if in reliable companies, met all the requirements of the contract, and that defendant had the full day in which to perform or tender performance; also, that plaintiff could not recover if performance was prevented by the action of his agent, which was a question for the jury. Brauer v. Macbeth, 138 Fed. 977.

Railroad—Conductor—Negligence.

Where a passenger in the act of alighting from a railway car was told by the conductor to jump as the train was in motion, but the train was not in motion, as the passenger could easily have ascertained, and she became excited, jumped, and was injured, the New Jersey Court of Errors and Appeals held (Staines v. Central Railroad of New Jersey) that it was a question for the jury whether the passenger had contributed to her injury by her own negligence. The court said: "The peril presented to her mind was that of being carried beyond her station, and although she could have ascertained that the train was not actually moving at the moment, she would naturally, and almost unavoidably, infer from the conductor's language that the train was on the point of moving, and that the danger of being carried beyond her station was imminent. We think it is a question for a jury whether the conductor's language was such as naturally to deprive her of the power of judgment and self-control. If it was, she is not as a matter of law chargeable with contributory negligence, even though the peril present to her mind was not a peril to life or limb, but only the danger of being carried beyond her destination."

Principal and Surety.

In Dyer v. Jacoway, decided by the Supreme Court of Arkansas in June, 1905, 88 S. W. 901, it was held that where a conveyance is made by the principal debtor to the surety to secure the payment of the debt, the creditor has an interest therein which the surety can not destroy, but, where the conveyance is merely to indemnify the surety, the creditor acquires no interest until the insolvency of the principal, until which time, and even afterwards, if he acts in good faith and before claim is made upon him, the surety may, both in equity and law, release the security.

Digitized by Google

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Calendar for October Term, 1905.

GENERAL CALENDER.

No. 1490. James R. Clements, by his next friend, James T. Clements, appellant, v. Potomac Electric Power Co., a corporation. C. C. Tucker, J. M. Kenyon, E. S. Bailey for appellant; C. C. Cole, J. J. Darlington, R. S. Huidekoper for appellees.

No. 1518. The National Council of the Junior Order of United American Mechanics of U. S., etc., appellant, v. The State Council of the District of Columbia, Junior Order of United American Mechanics, etc., et al. A. A. Birney, G. F. Williams, A. W. Shunk for appellant; J. J. Darlington for appellee.

No. 1533. Lawrence W. Sherwood, appellant, v. Brainard H. Warner. M. J. Colbert and C. J. Murphy for appellant; J. J. Darlington for appellee.

No. 1538. George B. Starkweather, appellant, v. Herbert W. T. Jenner et al. Richard P. Evans, J. E. Padgett, and E. Forrest for appellant; B. F. Leighton and R. G. Donaldson for appellees.

No. 1540. Mary A. Dobbins, appellant, v. Frank H. Thomas. Leo Simmons for appellant; R. G. Donaldson for appellee.

No. 1544. The Supreme Commandery of the United Order of the Golden Cross of the World, a corporation, appellant, v. Richard Bernard, et al., etc. Andrew Wilson and N. W. Barksdale for appellant; I. Q. H. Alward for appellees.

No. 1546. Moses Smith, jr., appellant, v. Alfred H. Casey. C. A. Keigwin for appellant; Joseph H. Stewart for appellee.

No. 1547. The Washington Times Co., appellant, v. Johanna Downey. D. W. Barker and W. J. Lambert for appellant; Hayden Johnson and J. McD. Carrington for appellee.

No. 1550. J. Charles McGuire, et al. appellants, v. Louis Gerstley, et al. L. A. Bailey for appellants; S. Wolf, M. Cohen, and E. A. Jones for appellees.

No. 1561. James T. Bradford, appellant, v. National Benefit Association, etc. John Ridout for appellant; A. A. Birney for appellee.

No. 1562. James T. Bradford, appellant, v. Isidore Small. John Ridout for appellant; A. A. Birney for appellee.

No. 1563. Joshua H. Millett et al., appellants, v. F. I. Allen, Commissioner of Patents. W. H. Singleton for appellants; John M. Coit for appellee.

No. 1566. Henry U. Rheam et al., appellants, v. James W. Martin. W. E. Lester for appellants; Jos. A. Burkart and J. Altheus Johnson for appellee.

No. 1567. The Washington, Alexandria and Mt. Vernon Ry. Co., appellant, v. Austin Chapman. A. A. Hoehling, Jr., for appellant; Hayden Johnson, J. McD. Carrington, Campbell Carrington for appellee.

No. 1569. John W. Clark, appellant, vs. Louis Gerstley et al. M. J. Keane for appellant; Simon Wolf, Myer Cohen, and Eugene A. Jones for appellees.

No. 1570. Francis Winslow et al., appellants, v. The Baltimore and Ohio R. R. Co., etc. W. G. Johnson for appellants; G. E. Hamilton and M. J. Colbert for appellees.

No. 1571. The District of Columbia, etc., appellant, v. Andrew Glass et al. A. B. Duvall and F. H. Stephens for appellant; Aldis B. Browne and Chas. F. Benjamin for appellees.

No. 1572. Computing Scale Co. of America, appellant, v. The Automatic Scale Co. Melville Church for appellant; E. Hilton Jackson for appellee.

No. 1573. Wilson McD. Lindsey, appellant, v. The Pennsylvania Railroad Co. et al. Burton T. Doyle and J. Altheus Johnson for the appellant; F. D. McKenney and J. S. Flannery for the appellees.

No. 1574. The Potomac Laundry Co., a corporation, appellant, v. Elizabeth J. Miller, executrix, etc. L. J. Mather and C. T. Hendler for appellant; W. C. Prentiss and Geo. Francis Williams for appellee.

No. 1577. Virginia Dangerfield, et al., appellants, v. Charles P. Williams et al. J. E. Padgett, E. Forrest, and H. E. Davis for appellants; T. Percy Myers for appellees.

No. 1578. Elmore Embrew Bernsdorff, appellant, v. Lucy Eva Bernsdorff. C. F. Carusi for appellant.

No. 1579. Frederick S. Young et al., appellants, v. The Norris Peters Co. R. G. Donaldson and John Ridout for appellants; R. Ross Perry, R. P. Barnard, and Guy H. Johnson for appellee.

No. 1581. The Capital Construction Co., appellant, v. Jennie W. Holtzman. R. Ross Perry and R. Ross Perry, jr., for appellant; C. W. Needham and J. J. Darlington for appellee.

No. 1582. Emma J. Overand, appellant, v. Edith A. Lane. B. F. Leighton for appellant; D. W. O'Donoghue for appellee.

1587. Katherine Atkins et al., appellants, v. Mary Best. A. A. Birney and G. E. Tralles for appellants; R. Golden Donaldson for appellee.

1588. Antonio Malnati et al., appellant, v. Noble H. Thomas. Henry E. Davis and E. B. Kimball for appellants; A. A. Lipscomb for appellee.

1589. Oscar J. Rickets, appellant, v. The Sun Printing and Publishing Association, a corporation. D. W. Baker for appellant; A. S. Worthington and C. L. Frailey for appellee.

No. 1591. Nonie L. Sullivan, admrx., etc., appellant, v. Virginia C. Huidekoper. A. E. L. Leckie, C. M. Fulton, and J. W. Cox for appellant; R. S. Huidekoper for the appellee.

No. 1592. The United States of America, appellant, v. William A. Day et al. Morgan H. Beach and D. W. Baker for appellant; Henry E. Davis for appellees.

No. 1593. Henry F. Iglehart et al., appellants, v. J. Howard Iglehart, executor, etc. C. H. Stanley, Andrew Wilson, N. W. Barksdale, and W. C. Balderston for appellants; W. V. R. Berry, B. S. Minor, and T. L. Jeffords for appellees.

No. 1594. Anna Grinnell, administratrix, appellant, v. Charles B. Purvis. C. W. Stetson for appellant; W. J. Lambert and D. W. Baker for appellee.

No. 1597. The Ohio National Bank of Washington, appellant, v. Henry S. Berlin et al.

Digitized by Google

Thomas C. Taylor and Jesse C. Adkins for appellant; C. F. Carusi for appellees.

No. 1598. Frank C. Muller, appellant, v Caroline G. Muller. Hayden Johnson and W. W. Boarman for appellant; John E. Taylor for appellee.

No. 1599. Leander Scott et al., appellants, v. Henry A. Herrell et al. John E. Roller for appellants.

No. 1600. James E, Clements, appellant, v. Alonzo S. Mutersbaugh, admr., etc. Leonard J. Mather for the appellant; Clayton E. Emig for appellee.

No. 1601. Berton O. Wetmore, admr., etc., appellant, v. James L. Karrick. Wm. L. Ford for appellant; W. W. Millan, R. E. L. Smith, J. J. Darlington for appellee.

No. 1602. John H. Adriaans, appellant, v. William B. Reilly et al. Alfred D. Smith for appellant; J. G. Bigelow for appellees.

No. 1603. Leslie M. Shaw. Secretary of the Treasury, appellant, v. Morgan Bryan, trustee in bankruptcy. D. W. Baker for appellant; G. E. Hamilton, M. J. Colbert, and J. J. Hamilton for appellee.

No. 1606. Mary F. Ford, appellant, v. Joseph C. Ford. John Raum for appellant.

No. 1607. George B. Cortelyou, Postmaster-General, appellant, v. Henry O. Houghton, trustee, et al. Henry H. Glassie for appellant; William S. Hall for appellees.

No. 1608. George B. Cortelyou, Postmaster-General, appellant, v. Bates and Guild Company. Henry H. Glassie for appellant; William S. Hall for appellee.

No. 1611. Stilson Hutchins, appellant, v. John W. Langley, Receiver. E. C. Brandenburg, C. A. Brandenburg, and F. W. Brandenburg for appellants; D. W. Baker and W. J. Lambert for appellees.

SPECIAL CALENDAR.

1 (1541). Stephen U. G. Johnson, alias Garnet S. Johnson, appellant, v. United States. D. W. Baker for appellant; M. H. Beach, C. A. Keigwin, and J. S. Easby-Smith for appellee.

2 (1542). United States, appellant, v. Stephen U. G. Johnson, alias Garnet S. Johnson. M. H. Beach, C. A. Keigwin, J. S. Easby-Smith for appellent; D. W. Baker for appellee.

3 (1552). William W. Payne et al., appellants, v. Leigh Robinson, executor, et al. J. J. Darlington for appellants.

4 (1554). The Washington Loan and Trust Co., garnishee, appellant, v. Susquehanna Coal Co., a corporation. A. S. Worthington and C. L. Frailey, for appellant; F. D. McKenney and J. S. Flannery for appellee.

5 (1555). U. S. ex rel Willis C. West, appellant, v. Ethan A. Hitchcock, Secretary of the Interior, S. A. Putnam, W. C. Shelley, and W. H. Robeson for appellant; Morgan H. Beach and D. W. Baker for appellee.

6 (1556). The U. S. of A. on the relation of Emilie C. Riley, appellant, v. The Baltimore and Ohio Railroad Co., etc. C. A. Douglass and and E. B. Sherrill for appellant; G. E. Hamilton and M. J. Colbert for appellee.

7 (1559). The U. S. ex rel. Margarito Romero et al., appellants, v. George B. Cortelyou, Postmaster General. W. H. Robeson and S. A. Putnam for appellants; Morgan H. Beach and D. W. Baker for appellee.

8 (1564). Samuel Gassenheimer, appellant, v. United States. H. E. Davis and D. W. Baker for appellant; Morgan H. Beach, C. A. Keigwin, and J. S. Easby-Smith for appellee.

9 (1565). Charles P. Posey, appellant, v. United States. D. W. Baker and M. F. Mangan for appellant; Morgan H. Beach and J. S. Easby-Smith for appellee.

10 (1568). James H. Harris, Warden of the U. S. Jail, in and for the District of Columbia, appellant, v. Robert Lang. M. H. Beach and D. W. Baker for appellant; A. W. Scott and M. T. Clinkscales for appellee.

11 (1575). District of Columbia, plaintiff in error, v. Percy T. Lewis. A. B. Duvall for appellant; W. J. Lambert and D. W. Baker for appellee.

12 (1580). Taylor Knoll, appellant, v. United States. John W. Patterson for appellant; Morgan H. Beach, C. A. Keigwin, and D. W. Baker for appellee.

13 (1583). The United States of America, appellant, v. The Baltimore and Ohio Railroad Co. M. H. Beach and D. W. Baker for appellant; G. E. Hamilton and M. J. Colbert for appellee.

14 (1585). Thomas R. Martin, appellant, v. The District of Columbia. C. A. Brandenburg, E. C. Brandenburg, and F. W. Brandenburg for appellant; A. B. Duvall and F. H. Stephens for appellee.

15 (1586). Clarence A. Brandenburg, appellant, v. The District of Columbia. C. A. Brandenburg, E. C. Brandenburg, and F. W. Brandenburg for appellant; A. B. Duvall and F. H. Stephens for appellee.

16 (1590). Theodore A. Cook, appellant, v. United States. Hayden Johnson and J. McD. Carrington for appellant; Morgan H. Beach and D. W. Baker for appellee.

17 (1595). Frank S. Cahill et al., plaintiffs in error, v. District of Columbia. W. S. Duvall for appellant; A. B. Duvall and E. H. Thomas for appellee.

18 (1596). Mabel Grace McKay et al., etc., appellants, v. John C. Bradley, to the use of the Guarantee Trust and Safe Deposit Co., a corporation. A. A. Birney and A. S. Worthington for appellants; Fulton Lewis for appellee.

19 (1602). William A. White, Superintendent of the Government Hospital for the Insane, appellant, v. Alexander N. Willis. D. W. Baker for appellant; Richard P. Evans for appellee.

20 (1605). William A. White, Superintendent of the Government Hospital for the Insane, appellant, v. James L. Shaffer. D. W. Baker for appellant; Richard P. Evans for appellee.

21 (1609). Emory A. Bryant, appellant, v. The District of Columbia Dental Society. Irving Williamson and W. G. Johnson for appellant; Conrad H. Syme and Chas. A. Douglass for appellee.

22 (1610). Samuel Gassenheimer, plaintiff in error, v. District of Columbia. M. F. Mangan for appellant; E. H. Thomas for appellee.

PATENT APPEALS.

No. 259. Samuel Alexander, appellant, v Frederick S. Blackman, administrator of John J. Blackman, deceased. G. D. Seymour, H. A. Seymour, and W. Klingenstein for appellant; Chester A. Weed for appellee.

Digitized by Google

No. 289. In the matter of the application of Clara Amelia Baker. L. S. Bacon and J. H. Milans for applicant; John M. Coit for Commissioner of Patents.

No. 296. Edmund L. French, appellant, v. Charles H. Halcomb. George H. Christy for appellant; Alfred Wilkinson for appellee.

No. 299. Augustus O. Bourn, appellant, v. William G. Hill, Jr. Charles E. Foster for appellant.

No. 300. Henry C. Lavery, appellant, v. George W. Heene. D. P. Wolhaupter for appellant; Jos. B. Connolly for appellee.

No. 302. In the matter of the application of Otto Briede. G. H. Christy for applicant; J. M. Coit for Commissioner of Patents.

No. 304. Joseph J. O'Connell, appellant, v. Louis A. Schmidt. G. P. Barton for appellant; L. S. Bacon and J. H. Milans for appellee.

No. 305. In the matter of the application of Edward A. Hill. Jos. B. Connolly for applicant; J. M. Coit for Commissioner of Patents.

No. 306. In the matter of the application of Henry B. Moeser. Jos. B. Connolly and Henry C. Evert for applicant; J. M. Coit for Commissioner of Patents.

No. 307. In the matter of the application of George H. Thurston. Thomas F. Sheridan for applicant; J. M. Coit for Commissioner of Patents.

No. 309. In the matter of the application of William D. Hawley. A. E. Parsons and G. W. Hey for applicant; John M. Coit for Commissioner of Patents.

No. 310. Henry Price Ball, appellant, v. Ellsworth E. Flora. Geo. R. Hamlin for appellant; L. S. Bacon for appellee.

No. 311. In the matter of the application of Arthur S. Garrett. E. H. Fairbanks for applicant; John M. Coit for Commissioner of Patents.

No. 312. Henry J. Podlesak et al., appellants, v. Benjamin McInnerney. C. Le Roy Parker for appellants; J. F. Williamson and J. C. Pennie for appellee.

No. 313. In the matter of the application of Otis A. Mygatt. Melville Church for applicant; John M. Coit for Commissioner of Patents.

No. 314. In the matter of the application of William A. Schraubstadter. H. H. Simms and James A. Carr for applicant; John M. Coit for Commissioner of Patents.

No. 315. Charles D. Seeberger, appellant, v. Howland Russell. Chas. E. Foster for appellant.

No. 316. Charles A. Rolfe, appellant, v. Otto C. Hoffmann. L. S. Bacon and J. H. Milans for appellant; Luther L. Miller for appellee.

No. 317. Darius M. Orcutt, appellant, v. Benjamin T. McDonald, Jr., et al. Jackson H. Ralston for appellant.

No. 318. In the matter of the application of William I. Thomson. F. P. Warfield and H. S. Duell for applicant; John M. Coit for Commissioner of Patents.

No. 319. Carl E. Bauer, appellant, v. Seth A. Crone. Francis W. H. Clay for appellant.

The right of plaintiff in a suit to enjoin the maintenance of a nuisance, and for damages, to have the questions as to the existence of the nuisance, and the amount of damages, tried by a jury, is declared in Chesseman v. Hale (Mont.), 68 L. R. A. 410.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

GEORGETOWN UNIVERSITY

(FOUNDED 1789.)

SCHOOL OF LAW.

FACULTY.

REV. DAVID H. BUEL, S. J.,
President of the University.

HON. HARRY M. CLABAUGH, LL. D.,
(Chief Justice, Supreme Court, District of Columbia)
Dean of the Faculty and Lecturer on Common Law Pleading and Practice, and Equity Pleading and Practice.

GEORGE E. HAMILTON, LL. D.,
Lecturer on the Law of Wills.

HON. SETH SHEPARD, LL. D.,
(Chief Justice of the Court of Appeals of the District of Columbia)
Lecturer on Constitutional Law, the Law of Corporations, and Equity Jurisprudence.

HON. ASHLEY M. GOULD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Contracts, Criminal Law, and Domestic Relations.

HON. DANIEL THEW WRIGHT,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Insurance.

HON. WENDELL PHILLIPS STAFFORD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Agency.

CHAS. A. DOUGLASS, A. B., LL. B.,
Lecturer on the Law of Torts, Negotiable Paper, and Elementary Law.

MICHAEL J. COLBERT, A. M., LL. M.,
Lecturer on the Law of Personal Property and Partnership.

HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
Lecturer on the Law of Real Estate and the Law of Evidence.

Judge of the Circuit Court: DANIEL W. O'DONOGHUE, A. M., Ph. D., LL. M.

Court of Appeals: HON. JOB BARNARD and MESSRS. LEIGH ROBINSON and J. HOLDSWORTH GORDON.

Quiz Masters: CLARENCE R. WILSON, A. B., LL. M.; DANIEL W. O'DONOGHUE, A. M., PH. D., LL. M., and JAMES S. EASBY-SMITH, A. M., LL. M.

SAMUEL M. YEATMAN, A. M.,
Secretary and Treasurer.

FRANK E. CUNNINGHAM,
Assistant Secretary.

Digitized by Google

ADDITIONAL LECTURERS IN THE FOURTH YEAR OR POST-GRADUATE COURSE.

HON. HOLMES CONRAD,
(Late Solicitor-General of the United States)
On the History of the Development of Law and Comparative Jurisprudence, and on the History of the English Law.

HON. SETH SHEPARD, LL. D.,
(Chief Justice Court of Appeals of the District of Columbia)
On the History of Constitutional Law and the Foundations of Civil Liberty.

REV. RENE HOLAIND, S. J.,
On Natural Law and Canon Law.

MONROE SMITH, LL. D.,
(Professor in the School of Political Science of Columbia University, New York City)
On Civil Law.

HON. LOUIS E. McCOMAS, LL. D.,
(Associate Justice of the Court of Appeals of the District of Columbia)
On International Law and Foreign Relations of the United States.

RALEIGH C. MINOR, LL. D.,
(Professor of Law in the University of Virginia)
On the Conflict of Laws.

HON. JOHN W. YERKES, LL. D.,
On Railroad Accident Law, Municipal Corporations.

J. NOTA McGILL, LL. M.,
On Patent Law.

ALDIS B. BROWNE, LL. B.,
On Jurisdiction and Practice of United States Courts.

WILLIAM C. WOODWARD, M. D., LL. M.,
On Medical Jurisprudence.

GEORGE E. HAMILTON, LL. D.,
On Legal Ethics.

HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
On General Practice and Exercises in Pleading and Evidence.

The thirty-sixth annual session opens on Wednesday, October 4, 1905, at 6.30 p. m., in the Law School Building, Nos. 506 and 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

The Secretary will be at his office in the Law Building daily from 4.30 to 6.00 p. m. for information, enrollment, payment of fees, etc.

Students proposing to connect themselves with the School are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1322 F street northwest, and at the W. S. Thompson Pharmacy, 703 Fifteenth street northwest, or upon application to the undersigned. S. M. YEATMAN,
37-4t Secretary.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Robert E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Margaret C. Mooney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of September, 1905. BETTIE LE PREUX, 1501 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,127. Administration. [Seal.] 39-3t

Legal Notices

O. B. Glason, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maine, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen J. Thompson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1905. HOSEA H. CARY, East Pittston, Me. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,186. Admn. [Seal.] 39-3t

John B. Larner, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,298.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.
[Seal]
sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Digitized by Google

Legal Notices.

Chas. L. Frailey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Andrew Wylie**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. HORACE WYLIE, 1205 Vermont ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,174. Admn. [Seal.] 39-3t

McKenney & Flannery, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline A. Baker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. NATHAN C. TWINING, Bureau of Ordnance, Navy Dept. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,079. Administration. [Seal.] 39-3t

Michael J. Keane, Solicitor

In the Supreme Court of the District of Columbia,
Holding Equity Court.

Mary C. Deery, Complainant, v. John T. Neumeyer et al., Defendants.
In Equity, No. 25,617.

Michael J. Keane, the trustee in the above entitled cause, having reported a sale at public auction of part of lot ten (10), in square five hundred and twelve (512), as more fully described in the bill of complaint filed herein, to R. Harrison Johnson, for the sum of two thousand two hundred and fifty ($2,250) dollars, it is this **22d day of September, 1905**, ordered that the said sale be confirmed, unless cause to the contrary be shown on or before the **22d day of October, 1905**; provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter. [Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Wilson Gregory**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of September, 1905. FRANCES G. GREGORY, 2510 M st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,948. Administration. [Seal.] 39-3t

W. C. Martin, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Reuben Taylor**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. W. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,751. Administration. [Seal.] 39-3t

Legal Notices.

Philip Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Minnesota, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adelaide M. Shedd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. FREDERICK G. STUTZ, 48 W. 3d st., St. Paul, Minn. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,151. Administration. [Seal.] 39-3t

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia.
Holding an Equity Court.

Terrence J. McMahon v. the Unknown Heirs, Alienees, or Devisees of Charles Carter, Deceased.
Equity No. 25,554.

The object of this suit is to perfect the title of the complainant to lot numbered thirty-seven (37) in John M. Graham's subdivision of lots in square numbered two hundred and fifty-two (252) in the city of Washington, District of Columbia, as said subdivision is recorded in Liber H. D. C., at folio 184½, in the surveyor's office of the District of Columbia. Upon motion of the complainant, by his solicitor, it is, this 27th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Charles Carter, deceased, cause their appearance to be entered herein on or before the first rule day of November, 1905; otherwise the cause will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based upon the bill and affidavit filed herein, that further publication is unnecessary. [Seal] HARRY M CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-4t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

Estate of Mary E. Letts, Deceased.
No. 13,143. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, it is ordered this 27th day of September, A. D. 1905, that notice be and hereby is given to the **unknown heirs and next of kin of said Mary E. Letts, deceased**, and to all others concerned, to appear in said court on **Monday, the 30th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] HARRY M. CLABAUGH, Chief Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 39-3t

Millan & Smith, Solicitors

In the Supreme Court of the District of Columbia.

Frank Waters et al., Complainants, v. Lavinia Waters et al., Defendants. Equity No. 25,667. Docket 57.

Upon consideration of the report of W W. Millan, trustee, herein filed, showing that he has sold the south forty-five (45) feet of original lot seventeen (17) in square eight hundred and fifty-nine (859) in the city of Washington, District of Columbia, to Charles Specht, for four thousand five hundred dollars ($4,500), it is, this 28th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of October, A. D. 1905.**

Provided copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. [Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

Digitized by Google

Legal Notices.

SECOND INSERTION.

R. B. Horner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **David Lee**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. JULIA I. DAVIS, 1757 S st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,080. Administration. [Seal.] 38-3t

J. D. Coughlan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert E. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of September, 1905. JOHN D. COUGHLAN, 500 5th st. N. W.; DENNIS J. O'LEARY, 1825 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,137. Administration. [Seal.] 38-3t

J. A. Sweeney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles Ippolito**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. BENJAMIN W. GUY, 315 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,968. Administration. [Seal.] 38-3t

Fred L. Rosemond, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Ohio, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice V. C. Williams**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **14th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1905. J. W. CAMPBELL, Cambridge Ohio; FRED L. ROSEMOND, Cambridge, Ohio. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,317. Administration. [Seal.] 38-3t

P. S. Riggs, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John S. Manning**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. HELEN P. MANNING, care of R. S. Riggs, 146 Broadway, New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,161. Administration. [Seal.] 38-3t

Legal Notices.

[Filed September 18, 1905.]
A. Leftwich Sinclair, Attorney for the District of Columbia
In the Supreme Court of the District of Columbia,
Holding a Special Term as a District Court of the United States for the District of Columbia.
In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at **2 o'clock p. m. on the 31st day of October, A. D. 1905**, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 3 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE [Seal] W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 38-6t

Evans Browne, Attorney
Supreme Court of the District of Columbia.
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Napoleon J. T. Dana**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. MABEL LANIER TIBBALL, 210 Walnut st, Montclair, N. J. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,150. Administration. [Seal.] 38-3t

Wm. A. McKenney, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Halbert E. Paine**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of September, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,113. Administration. [Seal.] 38-3t

Digitized by Google

Legal Notices.

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold the south 8.29 feet of lot 54, all of lot 55, the north 12.46 feet of lot 56, the south 14 feet of lot 57, and all of lots 58 and 59 in square 302, improved by seven houses numbered 2240, 2242, 2244, 2246, 2250, 2252, and 2254 Eleventh street Northwest, Washington, D. C., for ninety-eight hundred ($9,800) dollars cash, less 3 per cent brokerage commission, it is, by the court, this 19th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 19th day of October, 1905. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. [Seal] 38-3t

Saml. Maddox and H. Prescott Gatley

In the Supreme Court of the District of Columbia, H. Rozier Dulany, Trustee in Bankruptcy of Thomas E. Waggaman v. Thomas E. Waggaman et al. In Equity, No. 25,649.

The object of this suit is to sell a certain tract of land in the District of Columbia known and designated on the plats thereof as Woodley Park, as subdivided by Thomas E. Waggaman and John Ridout, trustees, and distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and to set aside as a preference under the bankrupt law a certain deed of trust, dated July 25th, 1904, and given by said trustees to secure notes held by the Catholic University of America, aggregating $876,168.96. On motion of the complainant, by his solicitors, Samuel Maddox and H. Prescott Gatley, it is by the court this 18th day of September, A. D. 1905, ordered that defendants, **Eugene Ives, Emily A. Shuman, Kate M. Billings, Clara V. Dorsey, James L. McLane, Annie E. Bowie, and E. C. Humphrey,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 38-3t

Arthur A. Alexander, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Dorsey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. DANIEL W. O'DONOGHUE, 412 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,149. Administration. [Seal.] 38-3t

THIRD INSERTION.

Anson S. Taylor, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Clinton Smith,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **14th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of September, 1905. ALICE M. SMITH, Conduit road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,119. Administration. [Seal.] 37-3t

Legal Notices.

Joseph R. Fague, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Richard A. Arnold, Deceased. Probate. No. 12,773.

On consideration of the petition of Richard W. and Frederick S. Emmons, executors of said Richard A. Arnold, it is by the Court, this 13th day of September, A. D. 1905, ordered that the sale of part of original lot numbered four (4), in square numbered nine hundred and twenty-five (925), in the city of Washington, District of Columbia, made by said executors to A. D. Butz, at and for the sum of thirty-five hundred dollars ($3,500.00), cash, subject to a commission of three (3) per cent on said amount, to the party making the sale, be ratified and confirmed, unless cause to the contrary be shown on or before the **15th day of October, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three (3) weeks before said last named day. ASHLEY M. GOULD, Justice. A true copy. Attest: M. J. Griffith, Deputy Register of Wills. [Seal] 37-3t

Geo. Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Margaret Faunce,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of September, 1905. PHILIP P. FAUNCE, 814 8th st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,142. Administration. [Seal.] 37-3t

John L. Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ellen M. Kennedy, Deceased.
No. 13,135. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Otho Sullivan, it is ordered, this 8th day of September, A. D. 1905, that notice be and hereby is given to **Thomas Sullivan, Julia McCarthy (nee Sullivan), William Morgan, Ellen Morgan, Mary Morgan, and Ellen Morgan (nee Sullivan), and their unknown heirs, alienees, devisees, and next of kin,** and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 37-3t

Blair & Thom, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Virginia D. Corbit,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of September, 1905. GEORGE HELLEN, 1528 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,486. Administration. [Seal.] 37-3t

Digitized by Google

Legal Notices.

Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Heinrich W. F. Dukehart**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of September, 1905. JOHN WALDMAN, 609 7th st. N. W.; H. A. SCHEUERMAN, 7 Cst. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,010. Administration. [Seal.] 37-3t

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph Jefferson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,990. Administration. [Seal.] 37-3t

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Cassie Ann Butler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. R. GOLDEN DONALDSON, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,991. Admn. [Seal.] 37-3t

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James Dowd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of September, 1905. JOHN J. BROSNAN, 482 La. ave.; T. PERCY MYERS, 486 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,069. Administration. [Seal.] 37-3t

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Samuel Thomas Labby**, late of the District of Columbia, deceased All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of September, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,988. Admn. [Seal.] 37-3t

Legal Notices.

R. B. Behrend, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Louis Esberg, Deceased.
No. 13,007. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Herman L. Karpeles, it is ordered this 12th day of September, A. D. 1905, that notice be and hereby is given to **Alfred I. Esberg, Herman Esberg, Gus Simon, Ida Graebeke, —— Simon, —— Neuberg, —— Katz, —— Katz, —— Katz, M. H. Esberg, Henry Esberg, Joster Esberg, Edith Esberg, and Solomon Esberg**, and to all others concerned, to appear in said court on **Friday, the 20th day of October, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-3t

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Caspar Morgenweck**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 2d day of October, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of September, 1905. LINA MORGENWECK, by Chas. H. Bauman, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,409. Admn. [Seal.] 37-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New Jersey, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Phebe Holmes Lea**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of September, 1905. FREDERICK A. LEA, 1458 Bacon st., Wash., D. C.; AUGUSTUS S. CRANE, 227 Rahway ave., Elizabeth, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,157. Administration. [Seal.] 37-3t

Newton & Gillett, Solicitors

In the Supreme Court of the District of Columbia.
Catherine A. Newton v. Thomas A. Valentine.
Equity No. 25,510.

The object of this suit is to have partition by sale of east fifteen feet of lot nine, in Davidson's subdivision of square one hundred sixty-three, in the city of Washington, District of Columbia. On the motion of the complainant it is, this 14th day of September, 1905, ordered that the defendant, **Thomas A. Valentine**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Post and The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. [Seal] True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 40

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - OCTOBER 6, 1905

CONTENTS.

Editorial 625
A Municipal Court for the District of Columbia 626
SUPREME COURT OF NEW YORK:
Ruth Cranch, respondent, v. The Brooklyn Heights Railroad Company 630
Miscellany 632
Legal Notices 636

The District Courts.

The Court of Appeals of the District of Columbia convened for the October term on Tuesday, October 3, with Chief Justice Shepard and Associate Justices Duell and McComas sitting. The calendar for the term is quite heavy, containing ninety-two cases, the largest number on the calendar at the beginning of any term in the history of the court. All of the cases heard by the court at the last term were disposed of prior to taking the recess for the summer.

The Supreme Court of the District, in its several branches, convened for the October term on the same day. The several civil calendars of the court contain 787 cases, showing an increase of 12 cases as compared with the number at the commencement of the October term last year. On the equity calendar are 101 cases, a decrease of 6; on the law calendar, 686 cases, of which 491 are on the trial calendar, a decrease of 3, and 195 are cases coming up from justices of the peace, either by appeal or by certiorari, an increase of 21. The criminal calendars of the court are also quite heavy.

The assignment of the justices to the several courts remains the same as prior to the adjournment of the court, viz: Circuit Court No. 1, Mr. Justice Barnard; Circuit Court No. 2, Mr. Chief Justice Clabaugh; Equity Court No. 1, Mr. Justice Anderson; Equity Court No. 2, Mr. Justice Stafford; Probate Court, Mr. Justice Stafford; Criminal Court No. 1, Mr. Justice Wright; Criminal Court No. 2, Mr. Justice Gould.

The Washington College of Law.

The opening exercises of the Washington College of Law were held on Monday evening, October 2, in the presence of an interested audience of friends of the students and of the institution. Mrs. Ellen Spencer Mussey, dean of the faculty, presided, and made a brief address, and remarks were made by other members of the faculty. The enrollment of students was quite large, and embraces about an equal number of men and women. This fact is of interest as showing that, although the college was founded primarily for women, the members of the other sex are availing themselves of the advantages it affords for the study of the law.

Georgetown University Law School.

The opening exercises of this institution were held on Wednesday evening, October 4, in the Law Building, and were largely attended. Chief Justice Clabaugh, of the Supreme Court of the District, dean of the faculty, presided, and introduced Rev. David H. Buell, S. J., the newly-elected president of the university, who spoke briefly, dwelling particularly upon the importance of unity of feeling and action on the part of the students of the several departments.

The dean then announced the changes in the faculty and the addition of several new courses of lectures. Hon. John W. Yerkes, commissioner of internal revenue, will lecture to the fourth year class on railway law and municipal corporations, in place of the lamented Judge Charles C. Cole. Rev. John A. Conway, S. J., will lecture on natural and canon law, in place of Rev. Reve Holaind, S. J., who is made emeritus professor. Mr. Justice Morris, late of the Court of Appeals of this District, has retired from the faculty and is succeeded by former Solicitor-General Holmes Conrad.

A new course on Federal Practice and Procedure has been added to the fourth year course, and Mr. Aldis B. Browne, of the District bar, has been elected to that chair. Three courses of special lectures will be delivered by the quiz masters at the commencement of each term, as follows: For the first term, by Mr. J. S. Easby-Smith; for the second term by Mr. Daniel W. O'Donoghue, and for the third term by Mr. Clarence R. Wilson.

Mr. Justice Stafford, professor of the law of agency, welcomed and congratulated the students; and brief addresses were also made by other members of the faculty.

The session has opened most auspiciously, with the largest enrollment of students in the history of the school.

Digitized by Google

A MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA.

[Communicated.]

After three years of trial, it can be truthfully said that the present system of having certain cases tried by ten justices of the peace, each having a separate and distinct office, situated in a different part of the city, is not only clumsy, but even with the experiment of paying the justices only two-thirds of their legal salaries, needlessly expensive.

The cases tried before these justices are of two classes:

First. Landlord and tenant cases, where a landlord seeks to dispossess a tenant for the nonpayment of rent or for other reasons. This class comprises much the larger number of cases coming before the justices of the peace, or nearly nine-tenths of the whole number. The great majority of the landlord and tenant cases are uncontested.

Second. Debt cases including all the ordinary cases of debt, in which the sum involved does not exceed $300, as well as replevin and attachment. These cases are generally contested, frequently take hours to try, and involve difficult questions of law and fact.

The Code provides that each justice shall have a separate and distinct sub-district, and that his office or court shall be situated in that sub-district, and that a person shall be sued before the justice in whose sub-district he resides. These different courts are supposed to be situated close together and in proximity to the Court House, but in reality they they are quite far apart; and a person desiring to visit each one of them, and to transact any business there, would have to give up the greater portion of the business hours of the day in order to do so.

As the landlord and tenant cases form the greater portion of the cases before these courts, it follows that the real estate men have most of the business before them, and not infrequently they have to visit many of them in one day. Therefore on account of the situation of these different courts, the real estate men have to spend a considerable part of their day going from one court to another in order to attend to their cases, or employ some one to do this for them. Each case has to be watched and some one has to be present to see that it is properly tried or it may be passed over and possibly dismissed.

Real estate men generally expect to get judgment by default, and get it without delay, and make their arrangements accordingly, setting their cases for trial at the different courts about a half an hour apart in order that they may get through their business as soon as possible. On account of this peculiar arrangement of things, a real estate man's day may, at any time, be disarranged and all his plans to visit these various courts in time to meet his different engagements frustrated by an unexpected delay. He may find a case on trial at one of the courts and be compelled to wait until it is over; and this may prevent him from being in time to keep his engagement in another court. This may be obviated by the justice stopping the trial he is engaged in and allowing him to be heard, but this practice, while frequently indulged in, is troublesome and apt to lead to confusion. It is sometimes difficult and embarrassing to interrupt a case in the progress of trial, in order to take up other business, while it is very unpleasant to keep a man waiting against his will, especially when such delay may make him late for an engagement elsewhere and possibly cause him to lose a suit by default. If, however, the real estate man should find his tenant in court, ready to contest his suit, he will be compelled to wait; and he finds himself in an unpleasant predicament if he has arranged to try a similar case in another justice's court half an hour later. He may be able to have one of the cases continued, but whatever course is taken results in an unnecessary trouble and expense to one or both of the parties to the suit.

A real estate man is apt to consider himself a favored suitor and to expect that the justice will in his absence act as his attorney and friend and see that his interests are protected. He rarely hesitates to interrupt proceedings, if he finds it inconvenient to wait until the justice can attend to his business. He sometimes appears long after the time set for the trial of his case, and if his tenant has not appeared, he expects to have judgment given in his favor without question, but if his tenant has appeared and had the case dismissed for want of prosecution, as he has an undoubted right to do, he is apt to complain of injustice and consider himself badly treated. Consequently great trouble and confusion arises by the awkwardness of the system which requires these litigants to make an almost daily circuit of the different justices' courts.

Thus we see a set of courts with their principal litigants constantly on the move, never expecting and rarely being ready for trial, if a contest should be made, and expending a large part of the day in going from court to court, with the constant fear that a busy justice or an unexpected trial may put their whole circuit out of order and cause them to lose a case because of the impossibility of being in two places at the same time. Certainly a system, by which such things are possible, is clumsy and presents a most ridiculous spectacle.

The boundaries of the different sub-districts are not very clear, as they have been changed more than once; and a litigant sometimes has to visit several courts before he can find the right one in which to bring suit. The defendant must be sued in the sub-district in which he resides, and it is sometimes very difficult to locate the residence of a constantly moving defendant. A plaintiff has been put to the expense of a change of jurisdiction by a defendant who had just changed his residence. This action was taken simply for the purpose of giving the plaintiff unnecessary trouble and expense, as no contest was made, and the case was allowed to go by default as soon as the change of jurisdiction had been effected.

The difference of opinion of the several justices, who act entirely independant of each other, not only in regard to questions of law, but in regard to practice, is most confusing and demoralizing. A litigant who is allowed to pursue a course of action by one justice and finds that another does not allow it feels seriously aggrieved, and not without some justification.

Digitized by Google

An unoccupied justice can not help a busy one or relieve him in any way in his work. Justice A may be busy from morning until night and have more than he can properly attend to; Justice B may not have an hour's work a day. Yet Justice A can not call upon Justice B to help him, or assign any of his cases to him to try, and Justice B could not do so, if he wished.

It is also a well-known fact that there is not enough business for ten justices to attend to, and some of them have very little to do. One justice has made the remark that he would do the business of any three of the sub-districts, if he could receive the pay of two justices and be allowed to make his own rules and regulations in regard to the trial of cases before him.

This system of separate and distinct minor courts, situated in separate parts of the city, having separate and distinct jurisdictions, and exercising their powers often in different and discordant ways, is antiquated, confusing and irritating to litigants, and needlessly troublesome and expensive to the District of Columbia. It should be changed, and the justices brought together in one compact, united, and harmonious body, when, acting in unison, they would be able to transact the business brought before them more efficiently and more satisfactorily to themselves and all concerned. The only proper way to do this is to establish a municipal court. Such a court, properly constituted, would be more dignified, more efficient, and less expensive than the present system.

The name of this office should be changed. It is by no means the ordinary "justice of the peace," a man generally unlearned in the law, who tries cases for a small fee on the principles of common sense. Under the requirements of the Code, this officer has to be a lawyer who has practiced law five years in the District of Columbia, which of necessity requires a man of considerable legal knowledge. Cases are frequently argued before them, on written briefs, involving questions of law which no one but a man of a thorough legal training could decide with any degree of intelligence. This officer resembles more closely the "trial justice," "the municipal justice," and "the district judge" of other cities, and he should be given a title commensurate with the dignity of the office which he holds. The amount of business transacted by these courts is considerable and they exercise no petty jurisdiction. The debt cases can be roughly estimated to involve $25,000, and the landlord and tenant cases $500,000 worth of real property per month.

The name "justice of the peace" is one which never can acquire much consideration or dignity in the District of Columbia. Under the old fee system, these officers had virtually to bid against one another and to tout for business in order to support themselves; and the one offering the best inducement to litigants coming before him or to his "patrons," as they were called, got the business away from the others. They could not be blamed for this, as a man could not be a justice of the peace without business, and there was only one way in which he could get business under the fee system. Under these circumstances a justice of the peace was little else than a hired agent of his "patrons," and was expected to do their will under the penalty of loss of business and hence of livelihood. The abbreviation for justice of the peace or "J. P." was under these circumstances known as "judgment for the plaintiff." This feeling still exists to some extent, and litigants frequently complain that they do not get what they pay for when cases are decided against them.

The name "municipal judge" would be more dignified and proper and would inspire more respect, and in that way make the office more efficient; and the establishment of a "municipal court" would impress the community more forcibly than anything else with the fact that the old "J. P." system, the fee system, and their accompanying evils, had been finally abolished in the District of Columbia.

A municipal court will be more efficient, as five judges working in unison and together can transact more business and do it better and quicker than ten judges working separately and apart, not being able to help one another or relieve each other in any way. The judges of a municipal court can divide the work up between them, so that each will have the same amount to do; they can consult with and help each other and act in unison, which is not the case at present.

The same thing can be said in regard to the deputy marshals. Each justice has his own separate deputy marshal; some are very busy and some have little or nothing to do. By bringing them under one head and working them as a unit their work could be done better and fewer need be employed; and the spectacle of one deputy having more than he can well attend to while another loafs will be no longer seen.

A municipal court would be less expensive than the present system, even with the reduced salaries of the justices. Its present expenses are as follows:

10 justices, $2,000 per annum each	$20,000
Expenses, $250 per annum each	2,500
10 deputies, $1,000 per annum each	10,000
Total	$32,500
Municipal Court (estimated).	
5 justices, $3,000 per annum each	$15,000
7 deputies, $1,000 per annum each	7,000
Clerks	2,500
Rent, stationery, etc	3,500
	$28,000

This court will be easily self-supporting. The fees received from January 1, 1902, to December 31, 1904, by the ten justices of the peace and the marshal's office from the business transacted before them are as follows:

Receipts From Jan. 1, 1902, to Dec. 31, 1904.

Justices' fees:	
January 1 to June 30, 1902	$8,435 92
July 1, 1902, to June 30, 1903	21,553 45
July 1, 1903, to June 30, 1904	22,212 55
July 1, 1904, to June 1, 1905	11,534 80
	63,736 72
Marshal's office:	
For year 1902	$9,138 81
For year 1903	10,032 46
For year 1904	10,978 73
	30,150 00

Digitized by Google

Total receipts for the three years	$93,886 72
Expenses of municipal court for three years	84,000 00
Surplus	9,886 72
Expenses of present system for three years	$97,500 00
Total receipts for three years	93,886 72
Deficit	3,613 28

But for the first six months the ten justices received their legal salaries, so the actual deficit for this time has been $8,613.28. Part of this time, however, additional deputy marshals were employed because some of the justices had more business than one deputy marshal could properly attend to, so that the deficit has been really larger. Had this municipal court been in existence during these three years, it would have cost about $20,000 less than the present system and have been more efficient and satisfactory.

A municipal court, therefore, need not be any more expensive to litigants than the present system; the cost of procedure can remain the same. The expense of the court is, of course, estimated, but it is a reasonable one and may be rather high. The receipts are not estimated but actual, and show a surplus of receipts over expenses of more than $3,000 per annum. These receipts are gradually increasing. The receipts for the last fiscal year from July 1, 1904, to June 30, 1905, were:

Justices' fees	$23,983 28
Marshal's office	11,444 01
Total	35,427 29

The argument, therefore, that a municipal court will be more expensive to litigants and will not be the poor man's court, like the courts of the present justices of the peace, falls to the ground.

A municipal court would also prove less burdensome to litigants, especially to the real estate men. Instead of being obliged to make the circuit of the different courts as they do now, they would only have to go to one place. The landlord and tenant cases could always be taken up the first thing in the morning, and, as they are mostly uncontested, they could be quickly disposed of, and the real estate men or their representatives could immediately return to their business. This one thing would do much to avoid confusion and annoyance, not only for the judges but also for the litigants. After the landlord and tenant cases and the other uncontested cases are disposed of, the serious business of the day could be taken up, that of trying the cases in which there is a contest.

A municipal court would be also more expeditious. As soon as one judge of this court becomes unoccupied any case awaiting trial could be assigned to him, and a trial could be immediately given.

The item of clerks is a most important one. A busy justice can not be his own clerk and attend to his duties as a judge at the same time. Imagine, if you can, a justice in the midst of a trial, with lawyers on both sides and a witness on the stand; he is fully occupied. A man comes in who wishes to file a suit; he does not hesitate to interrupt the case on trial, and the justice is expected to prepare his papers and swear him to them, fix the time for trial, change his money, and possibly do other things for him, while the case on trial waits or the judge tries to attend to both at once, much to his annoyance and the annoyance of those engaged in the trial and to the serious detriment of the case. By the employment of clerks all these things can be taken care of where they belong, and the justice would be relieved of a very laborious task, which does not form part of his judicial duties or belong to his office. The keeping of a docket, preparing the necessary writs, and seeing that the proper charges are made and collected, are serious matters, and a busy justice can not give them proper attention when occupied with his other duties, and he often has to suffer in consequence. These dockets are carefully inspected, and the justice is held to a strict account; no excuse is allowed on account of confusion and hurry for fees not collected, and they must come out of the justice's pocket.

Thus it appears that a municipal court is more dignified, more efficient, and less expensive than the present system of separate justices' courts. It is no more expensive in the way of costs and fees to litigants, and much less burdensome and annoying to them in every other way. Much can be said in favor of its adoption, and nothing of serious importance against it.

Too much importance can not be given to the great benefit to be gained by centralizing and concentrating the work now done by the different justices of the peace. At present the work is performed by nine justices (one of the original ten having died) located in different parts of the city, each having a separate office, a separate district, and a separate deputy marshal. We thus have nine distinct tribunals, independent of and having no relation or connection with each other, except that they have the same powers and try the same kind of cases. We consequently have:

1st. The daily round or enforced journey of the litigants, already mentioned and referred to at some length.

2d. The difficulty in finding the proper court in which to bring a suit. A litigant, owing to the want of knowledge of the exact boundaries of the different sub-districts, sometimes has to visit two or three of these courts before he can find the right one in which to bring his suit. It is often difficult to locate a defaulting debtor, but the creditor must do so at his own risk. If he makes a mistake and sues him in the wrong sub-district, the debtor can have the case removed to the proper sub-district at the creditor's expense. The creditor can be thus put to unnecessary trouble and expense by a captious debtor, who may have just changed his residence. This is manifestly unjust and absurd.

3d. Cases can, however, be and are not infrequently brought by consent before a justice in whose court they do not belong, because of the convenient location of his office or for other reasons. This is not illegal; it is only subject to the objection of the defendant, who alone can take exception to it. If he deliberately waives this objection, the jurisdiction of the justice is complete and he can try the case. By such action on the part of the litigants, one

Digitized by Google

of the principal provisions of the Code in regard to these courts can be evaded.

4th. Inequality in the amount of work of the different justices. As each case has to be tried in the sub-district in which it belongs, the justices can not divide up the work or relieve each other. As a consequence some of them are very busy and some have little to do most of the time. This inequality becomes more apparent when the fact is remembered that a justice has to be his own clerk. A busy justice can not possibly attend to clerical duties during business hours, and consequently he has to remain at his office from one and a half to two hours afterwards, fixing up his writs and making his docket entries. This inequality can not be well remedied by changing the boundaries of the sub-districts. This has been done once or twice, but without much success.

5th. Important matters are sometimes seriously delayed. The deputy of a justice may be busy and away when an important case, such as an attachment or replevin, needing the immediate attention of that deputy, is brought into the office. Nothing can be done in the absence of the deputy, and the case has to wait to the great detriment and annoyance of the litigant and the possible loss of the very object of his suit, unless the litigant is willing to go out on a search and lucky enough to find another deputy who is unemployed. This is especially true in the summer time, when some of the deputies are off on their vacations and the rest are doing double duty.

The reduction of the number of the justices to six, as proposed by the Code, will not cure these evils. It will mitigate some of them, while it will tend to aggravate others. It will be less expensive, even with the payment to the justices of their legal salaries, than the present system. But with the reduction in the number of justices the business of each court will be necessarily increased, and some of them will undoubtedly require more than one deputy marshal to attend to this increased amount of business. This will make the expense of the six justices about the same as that estimated for the municipal court. It will be somewhat less burdensome on litigants, as it will be easier to visit six courts than ten; but in every other respect the evils will remain, as the same system is retained. The justices will continue to act independent of each other, disunited if not discordant. The amount of work done by the different justices can not be equalized, because there is no means by which this work can be properly divided up so as to have it done in the most expeditious and economical manner. Important matters coming before one justice and needing the immediate attention of his deputy will still have to wait, if that deputy happens to be occupied and away from the office. It is the system and not the number of the justices and deputies which is at fault.

Under the present system, or rather utter lack of system, everything is scattered. There is no head, no center, no guiding force. Much energy is wasted, much time lost, and much money needlessly expended. With a municipal court these evils will disappear. There then would be only one place in which to file suits, and one place to try them. The litigant, especially the real estate man, would be spared his daily journey. A litigant would not be compelled to go to two or three places in order to find out the proper court in which to bring his suit. The justices could divide up the work between them each day and attend to it more effectively and more expeditiously, and an unoccupied deputy could always be found at the court and the litigant need not be obliged to search for one to serve his papers. Not until the work done by these different justices is united and concentrated under one head and one court can it be definitely ascertained and determined how many justices and how many deputies will be required to do it properly, expeditiously, and most economically. As long as this work is scattered among several different distinct tribunals, there will continue to be a waste of time, of force, and of money.

HENRY RANDALL WEBB.

September 11, 1905.

Railroad—Negligence—Accident—Risk.

In the case of Campbell v. Railway Transfer Company et al., recently decided by the Supreme Court of Minnesota, it appeared that the plaintiff, a switchman, while coming down the side of one car, was injured by one end of a grain door board resting against a cleat supporting the way on top of another car and protruding over the side of the latter, which was standing on an adjoining track. It was shown that one defendant was in the habit when unloading cars of placing boards used for the purpose of closing car doors upon the top of such cars, and that another defendant was in the habit of receiving such cars with admitted knowledge of such custom. The court held that the question of negligence as to both defendants was properly a question of fact for the jury; that the defense of assumption of risk was not available as a defense to a defendant not an employer of the person injured; that the plaintiff under the circumstances could not be held as matter of law to have assumed such risk, and that an award of $3,000 for a compound comminuted fracture of the right leg, resulting in permanent injury, and for some damages to the left leg, whereby the plaintiff, who was earning $3 a day, was confined to a hospital for several months and was incapacitated from labor for about a year, was not excessive.

The practice, in case of an excessive verdict, of naming a sum for which judgment may be rendered at the option of one of the parties, is held, in Heimlich v. Tabor (Wis.), 68 L. R. A. 669, not to violate the rights of either party if grounded upon the proper basis.

That no warranty that the article will be suitable for the intended use can be implied, is held in Rollins Engine Co. v. Eastern Forge Co. (N. H.), 68 L. R. A. 441, where an express contract is made to forge a steel piston rod of specified dimensions, without stating that it is intended for any particular use.

Digitized by Google

Supreme Court of New York.

APPELLATE DIVISION—SECOND DEPARTMENT.

RUTH CRANCH, RESPONDENT,

v.

THE BROOKLYN HEIGHTS RAILROAD COMPANY.

PERSONAL INJURIES; CONTRIBUTORY NEGLIGENCE.

Held, that the plaintiff was not chargeable with contributory negligence as matter of law in assuming that an approaching train would not continue on its way up to the point where she attempted to cross the tracks.

Decided September, 1905.

Before HIRSCHBERG, P. J.; WOODWARD, JENKS, RICH, and MILLER, JJ.

APPEAL by defendant from a judgment in favor of plaintiff in an action for personal injuries, and from an order denying a motion for new trial. Affirmed.

I. R. Oeland for appellant.

Stephen C. Baldwin for respondent.

JENKS, J.—In view of the satisfactory opinion of Kelly, J., on the motion for a new trial, full discussion is unnecessary. I think that the plaintiff was not chargeable with contributory negligence as a matter of law in assuming that the approaching train would not continue on its way up to the point where she attempted to cross. She is entitled to the most favorable inferences (Smith v. N. Y. C. & H. R. R. R., 177 N. Y. 224). In that case the court, per Werner, J., say:

"Was the plaintiff's intestate reasonably and ordinarily careful of his own safety in the circumstances? It can not be said that intelligent and reasonable men, applying the rule of ordinary care to the facts of this case, could not fairly differ in their answers to this question, and, therefore, it is one for the arbitration of a jury, and not for the decision of a court." So, too, in Canning v. Buffalo, R. & P. Ry. (168 N. Y. 555), Cullen, J., for the court, says: "Therefore the question to be determined in this case is whether it can be said that, as a matter of law, the plaintiff recklessly approached a known danger or took doubtful chances of passing safely in front of the train, or whether, under the circumstances of the case, it was a question as to which prudent men might reasonably differ." And in Parsons v. N. Y. C. & H. R. R. R. (113 N. Y. 355), the court, per Ruger, Ch. J., say: "The law does not forbid persons from crossing railroad tracks or impose upon them exclusive responsibility for damages incurred in making such an attempt. The question is whether the injured party, under all of the circumstances of the case, exercised that degree of care and caution which prudent persons of ordinary intelligence usually exercise under like circumstances. This rule must in all cases, except those marked by gross and inexcusable negligence, render the question involved one of fact for the jury."

The plaintiff desired to go to the station of the defendant in order to take passage on its train which was scheduled to stop there at a particular time for passengers. To reach the platform of the station she was compelled to cross the rails at grade. The plaintiff was not held to the rule that applies to a mere traveler crossing a railroad track on a public highway. Terry v. Jewett, 78 N. Y. 338; Brassell v. N. Y. C. & H. R. R. R., 84 N. Y. 241; Warner v. B. & O. R. R., 168 U. S. 339. Upon the evidence the jury could have found properly that the plaintiff, seeking the station to take the train, need not "exercise the same circumspection and care" as a traveler on the highway or a trespasser. Warner v. B. & O. R. R., supra. In determining whether the plaintiff was justified in attempting to cross the tracks there are certain circumstances which were germane, in that they may have implied an invitation to the plaintiff. The place of the station, relative to the situation of the tracks which required her to cross the tracks at grade in order to take the train, might warrant her in concluding that she would not be put in jeopardy when thus seeking to gain the platform. Jewett v. Klein, 27 N. J. Eq. 550, cited with approval in Terry v. Jewett, supra. Indeed, in that case, Dalrimple, J., for the court, says that under similar circumstances a passenger was "fully justified in concluding that he would be safe from harm from a train on the track which he was thus obliged to cross in order to secure his passage." See, too, Warner v. B. & O. R. R., supra.

There is evidence that the plaintiff, who had lived in the neighborhood for sixteen years and had taken these trains constantly, believed reasonably that it was the uniform custom of all trains to stop before coming to the point at which she attempted the crossing. See Beecher v. Long Island R. R., 35 App. Div. 292, 294, aff'd 161 N. Y. 222. This case may be discriminated from the criticism of Cullen, J., in Beecher's case at page 300, in that the evidence in this case for the plaintiff was that the custom was practically uniform.

There was evidence that the train which struck the plaintiff approached, passed the crossing, and came upon her with unabated speed and without any notification that it was to continue on its course by platform and by station, in departure from this uniform custom of stoppage. It might be concluded that the plaintiff would have been justified in assuming that the train would give some warning of such a course. In Dublin, Wicklow & Wexford R. R., vol. 3, App. Cas. 1115, Lord Selborne said: "Where there is a crossing so used at a station where a train by which an intending passenger proposes to travel may stop, and where by the arrangement of the company another train not stopping there may also be appointed to pass through that station from the opposite direction about the same time, it appears to me to be the duty of the company to use proper and sufficient means to give warning of the approach of such other train," etc. See, too, Vandewater v. N. Y. & N. E. R. R., 135 N. Y. 583, 588; Henavie v. N. Y. C. & H. R. R. R., 166 N. Y. 280, 284.

The question of omitted signals is not up in this case, as if the plaintiff had not seen the train, but I think that that omission may be considered in scrutinizing the conduct of the plaintiff in her attempt to cross the tracks. In

Digitized by Google

Dublin, Wicklow & Wexord R. R. (supra), Lord Selborne said: "But as the present case actually stands upon the supposition (which has been affirmed by the verdict) that there was no whistling, the question of contributory negligence appears to me to be one particularly fit to be submitted to the jury. I could not (on that supposition) say that the jury were drawing inferences which they were not entitled to draw from the evidence if they thought that the deceased might have been put off his guard and induced to cross the line at the time and in the manner he did by the practice (on the one hand) of the company with respect to the use of this crossing for passengers alighting from or going (with their friends) to meet trains stopping at the station, and by this omission (on the other hand) to give the usual notice by whistling of the approach of this particular express train." See, too, Parsons v. N. Y. C. & H. R. R. R., supra, at 363; McNamara v. N. Y. C. & H. R. R. R., 136 N. Y. 650; Doyle v. Penn. & N. Y. Canal & R. R., 139 N. Y. 637, 639; Warner v. B. & O. R. R., supra.

My brother, who dissents, writes: "It should not avail the plaintiff that she believed the train would stop, for a train stopping could properly reach the point of the accident less than a car's length beyond the rear of the down train." I do not think that the evidence warrants this statement as bearing upon contributory negligence as matter of law, but that the jury were free to conclude that a train about to stop at that station in the usual and proper manner would not reach the point of the plaintiff's crossing. The defendant maintained a concrete platform, 120 feet long, in connection with its station. Examination of the map in evidence shows that the end of that platform nearest Eighty-fourth street was 9 feet 2 inches distant from the nearest curb line thereof, and that there was a space of 36 feet from that curb line to the further curb line. The roadway of the street is covered with boarding. The plaintiff, when crossing, was on the Brooklyn side, the further side, the north side of the board crossing. If this be correct she must have been in Eighty-fourth street and at least 9 feet plus 15 feet or 24 feet (and may have been nearly 39 feet, and she says about 35 feet) distant from the end of the concrete platform. Now let us consider all of the evidence as to the point reached by trains which stopped at the station and its adjunct, this concrete platform. The plaintiff testifies that when she saw trains stop there they stopped at about the end of the concrete platform. Her witness Brilles testifies that they stopped half a foot or a foot over the concrete platform. Her witness Gillespie testifies that trains stopped within the concrete—this side of Eighty-fourth street—that it stops before it goes on Eighty-fourth street.

Plaintiff's witness Foley testifies they stopped before they went to Eighty-fourth street, in front of the platform, "generally on about a line with the station sidewalk, as near as I can recollect." Her witness Voorhees testifies that he never saw a train stop at the depot with any part of the train over on to Eighty-fourth street—afterward qualified by the statement that at some times the front of the cars would "reach on" the planking; not as a general thing. Nor was he materially shaken on cross examination, for in answer to the question as to the extension of the train over Eighty-fourth street under certain conditions he said, "yes, it would if it did, but I never see them," and he reiterates on the redirect: "I say they never cross the crossing." The plaintiff's witness P. Mayott testifies that when trains stopped with reference to the station platform the front of the car stopped right on the end of the platform. On cross-examination he says it might run a little "on the sidewalk," "not a foot away from the end of the platform." His testimony as to 35 or 40 feet, it must be noted, is as to the distance of the rear platform of the first car from the end of the concrete platform—that is, the rear end was that far back from the end of the concrete towards Eighty-fourth street, not Eighty-fifth street. This is clear from the context, in view of his location of the front platform of the car, made in answer to the previous question, "not a foot away from the end of the platform."

If the jury accepted the evidence adduced by the plaintiff as to the position of trains stopping at the station, they were clearly justified in the conclusion that the plaintiff crossed at a point never reached by the trains which stopped at that station, for she was at least 23 feet distant therefrom. There is evidence in contradiction adduced by the defendant. Its motorman testifies that they usually stopped so as to get the front of the cars right across Eighty-fourth street; that "it would go right across the street." A former employee, Vance, testifies that when they have a four-car train and they stop the front of the car extends over the sidewalk; "I think" that the front car generally runs over past the concrete platform. Uhlenbush testifies that some would stop before; the front of the car would stop just at Eighty-fourth street, and others would cross over. Roth testifies that the point of stoppage differed according to the number of cars; that three-car trains generally stopped at the head of Eighty-fourth street, but that four-car trains "have got to stop over Eighty-fourth street in order to have the platform to reach the lower platform." On cross-examination he testifies: "The trains running around between 10 and 11 in the morning at that time were three-car trains generally. Those regular passenger trains were three-car trains. Those trains, the three-car trains, when they stopped would stop so that all of the train was opposite the cement platform."

As the evidence warranted the inference by the jury that the trains in the operation of stopping never reached the point where the plaintiff crossed, but there was always a space from at least 23 to possibly 35 feet between the head of the train and her place of crossing, it seems to me that it can not be said properly that "it should not avail the plaintiff that she believed the train would stop, for a train stopping could properly reach the point of the accident less than a car's length beyond the rear of the down train."

The judgment and order must be affirmed, with costs.

Hirschberg, P. J., and Rich and Miller, JJ., concur.

Digitized by Google

Woodward, J. (dissenting.)—I dissent. In order to cross both tracks preparatory to taking an up train, the plaintiff and her husband waited for a down train to pass and stop opposite the station. Upon her direct examination the plaintiff testified:

"My husband crossed behind the train that had come in from the city, and I looked down and saw the train coming, after I passed the back of this stopped car, or stopped train. Q. When you passed behind this stationary train and looked down and saw the train coming, where was that train? A. Well, it was about entering the station. . . . So what did you do? A. I made a detour up the track to clear the ——. Q. Towards Brooklyn? . . . A. Yes, sir—to clear the train. . . . When I came out from behind that stationary train and saw this train coming in I thought that this was that 10.53 train which I wanted to catch. I received a dreadful blow on the head." This is substantially all of the plaintiff's direct testimony as to her movements immediately before the accident. Upon the cross-examination she explained that from her position between the tracks, near the rear of the stationary train, whence she last looked at the approaching train, her "detour" extended about 35 feet in the direction in which the latter train was running. In other words, after her last look, when she could have crossed in safety the single remaining track, she turned her back on the approaching train and walked about 35 feet without looking before attempting to cross, the train then being immediately upon her. It should not avail the plaintiff that she believed the train would stop, for a train stopping could properly reach the point of the accident, less than a car's length beyond the rear of the down train.

I think that the plaintiff was guilty of contributory negligence as matter of law, and that the judgment should be reversed.

Assault—Surgical Operation Unauthorized.

[Central Law Journal.]

In the case of Mohr v. Williams (Minn.), 104 N. W. Rep. 12, the facts were as follows:

Plaintiff consulted defendant concerning a difficulty with her right ear. Defendant examined the organ and advised an operation, to which plaintiff consented. After being placed under the influence of anæsthetics, and when plaintiff was unconscious therefrom, defendant examined her left ear, and found it in a more serious condition than her right, and in greater need of an operation. He called the attention of plaintiff's family physician to the conditions he had discovered, who attended the operation at plaintiff's request, and finally concluded that the operation should be performed upon the left instead of the right ear, to which the family physician made no objection. Plaintiff had not previously experienced any difficulty with her left ear, and was not informed prior to the time she was placed under the influence of anæsthetics that any difficulty existed with reference to it, and she did not consent to an operation thereon. Subsequently, on the claim that the operation seriously impaired her sense of hearing and was wrongful and unlawful, she brought this action to recover damages for an assault and battery.

The court found that the operation was consented to by plaintiff is not sustained by the evidence. At least, the evidence was such as to take the question to the jury. This contention is based upon the fact that she was represented on the occasion in question by her family physician; that the condition of her left ear was made known to him, and the propriety of an operation thereon suggested, to which he made no objection. It is urged that by his conduct he assented to it, and that plaintiff was bound thereby. It is not claimed that he gave his express consent. It is not disputed but that the family physician of plaintiff was present on the occasion of the operation, and at her request. But the purpose of his presence was not that he might participate in the operation, nor does it appear that he was authorized to consent to any change in the one originally proposed to be made. Plaintiff was naturally nervous and fearful of the consequences of being placed under the influence of anæsthetics, and the presence of her family physician was requested under the impression that it would allay and calm her fears. The evidence made the question one of fact for the jury to determine.

The contention of defendant that the act complained of did not amount to an assault and battery is based upon the theory that, as plaintiff's left ear was in fact diseased, in a condition dangerous and threatening to her health, the operation was necessary, and, having been skillfully performed at a time when plaintiff had requested a like operation on the other ear, the charge of assault and battery can not be sustained; that, in view of these conditions, and the claim that there was no negligence on the part of defendant, and an entire absence of any evidence tending to show an evil intent, the court should say, as a matter of law, that no assault and battery was committed, even though she did not consent to the operation. In other words, that the absence of a showing that defendant was actuated by a wrongful intent, or guilty of negligence, relieves the act of defendant from the charge of an unlawful assault and battery. We are unable to reach that conclusion, though the contention is not without merit. It would seem to follow from what has been said on the other features of the case that the act of defendant amounted at least to a technical assault and battery. If the operation was performed without plaintiff's consent, and the circumstances were not such as to justify its performance without, it was wrongful; and, if it was wrongful, it was unlawful.

As remarked in 1 Jaggard on Torts, 437, every person has a right to complete immunity of his person from physical interference of others, except in so far as contact may be necessary under the general doctrine of privilege; and any unlawful or unauthorized touching of the person of another, except it be in the spirit of pleasantry, constitutes an assault and battery. In the case at bar, as we have already seen, the question whether defendant's act in performing the operation upon plaintiff was authorized was a question for the jury to determine. If it was unauthorized, then it was, within what we have said, unlawful. It was a

Digitized by Google

violent assault, not a mere pleasantry; and, even though no negligence is shown, it was wrongful and unlawful. The case is unlike a criminal prosecution for assault and battery, for there an unlawful intent must be shown. But that rule does not apply to a civil action, to maintain which it is sufficient to show that the assault complained of was wrongful and unlawful or the result of negligence. 1 Addison on Torts, 689; Lander v. Seaver, 32 Vt. 114, 76 Am. Dec. 156; Vosburg v. Putney, 80 Wis. 523, 50 N. W. Rep. 403, 14 L. R. A. 226, 27 Am. St. Rep. 47.

The amount of plaintiff's recovery, if she is entitled to recover at all, must depend upon the character and extent of the injury inflicted upon her, in determining which the nature of the malady intended to be healed and the beneficial nature of the operation should be taken into consideration, as well as the good faith of the defendant.

"Strikes" Against Estates.

[New York Law Journal.]

The New York Supplement and State Reporter for July 31, 1905, contains the report of three cases exemplifying a tendency which may well be warned against, especially as concerns young lawyers who too often are inclined to sue first and analyze the evidence afterwards. In Schultz v. Carrard, in the Supreme Court, Appellate Division, First Department (94 N. Y. Supp. 740), it was laid down that where it is shown that a decedent against whose estate a claim is presented was amply able to pay his debts, it will be presumed that he discharged his duty, and this presumption will not be overborne without clear and convincing proof on the part of the plaintiff. The evidence was held insufficient to establish against an estate a claim for board and lodging furnished to deceased. In Mulhern v. Carrard, in the same tribunal (94 N. Y. Supp. 741), it was held that the unsupported testimony of a claimant is insufficient to establish against an estate a claim for personal services rendered to the decedent during his lifetime. The evidence was pronounced insufficient to establish against an estate a claim for personal services consisting of taking care of premises and nursing and tending decedent during his lifetime. In both of these cases the decision of a referee, disallowing the claim, was, very properly, affirmed.

In Maisenheider v. Crispell, in the Supreme Court, Appellate Division, Third Department (94 N. Y. Supp. 707), it was held in a proceeding to establish a claim against a decedent's estate for services in shaving deceased in his lifetime and other similar services, that the evidence was insufficient to establish a promise on the part of deceased to pay claimant anything more than he was actually paid at the time the services were rendered. The court emphasized the judicial policy of requiring clear and satisfactory proof before sanctioning payment of a claim against the estate of a decedent. The opinion lays bare the spirit of petty sordidness that is apt to crop out in litigations of this character. The court said:

"The proof shows that the plaintiff was a barber employed by one Lowerhouse at his barber shop in the Mansion House in the city of Kingston, at which house Cornell lived during all the time in question and until he died; that plaintiff was employed by the deceased to shave him daily, including Sundays, at his room in the Mansion House, and that at the time of shaving him he aided him in lacing his shoes, putting on his stockings, assisting him with his cuffs, necktie, and collar, and in brushing his clothes. The proof also shows that Cornell paid the plaintiff daily during all this time the sum of 25 cents, except on Sunday, when the plaintiff was paid by Cornell the sum of $1; that plaintiff paid the 25 cents daily to his employer, Lowerhouse, but retained the dollar paid to him on Sundays as his own.

"The proof also shows that these services were rendered in the morning of each day, and required from fifteen minutes to a half an hour in their performance, and that the time required for shaving was from fifteen to twenty minutes. The claim of the plaintiff was never presented to the deceased in his lifetime. This fact alone casts suspicion upon the validity of the claim, and the court can not sanction its payment, except upon satisfactory proof of its validity. Kearney v. McKeon, 85 N. Y. 136, at 141. There is no proof and no finding that the plaintiff ever promised to pay for these alleged extra services. There is some proof that Cornell felt kindly towards the plaintiff, and that he said he didn't know what he would have done without him, and that he was going to start him in business for himself in a barber shop. And one witness testified that Cornell said he was going to start plaintiff in business for himself for what he had done for him. But all that comes far short of a promise to pay the plaintiff for these services as extra services, and this testimony is not sufficient from which such a promise can be implied. At the most it merely showed a friendly interest in the plaintiff, and that the kindly disposition of the deceased towards him was such that he would be pleased to aid him in starting business on his own account, if the opportunity offered.

"The fact that the plaintiff was paid at the conclusion of all the services rendered the deceased each week day a specified amount, which was given to his employer, and that on each Sunday Cornell paid the plaintiff an extra or larger compensation for like services, which the plaintiff retained as his own, shows very clearly that Cornell thought he was paying daily for all the services rendered, and negatives the idea that any portion of such services rendered were regarded by either party as extra services. This is especially so in view of the fact that there is no proof that there was any special or extra compensation agreed upon at the time for any of these services as extra work, and the case comes far short of being supported by that clear and satisfactory proof which is required in cases of this character to justify a recovery."

The practical suggestion to be deduced from cases of this character is that it behooves a member of the bar critically to sift the evidence before undertaking the prosecution of a claim against the estate of a decedent, especially where it is for personal services, and, although the decedent was amply able to pay, no de-

Digitized by Google

mand was made during his lifetime. The hostile attitude of the courts is well founded in justice and experience, and the average attorney should recognize the duty of showing some substantially meritorious features in support of any claim of this class that he professionally fathers.

Receivers—What Attorney's Fees Constitute Expenses of Receivership.

[Central Law Journal.]

The general rule is that the determination of the expenses of a receivership, including court costs and attorney's fees, is largely discretionary with the trial court, and the latter's action is treated on appeal as presumptively correct.

The recent case of Myers v. Mutual Life Insurance Company, 75 N. E. Rep. 31, is interesting on the question as to what attorney's fees will be allowed as expenses attending a receivership. In that case the court held that while expenses incurred in the administration of a receivership for an insolvent, including expenses of litigation by which the trust fund is created or preserved, are chargeable against such fund, yet services rendered in litigation intended and operating to diminish the trust fund can not be made the basis of a claim for compensation out of such fund, although the result of such litigation was to establish a rule by which similar claims were expeditiously settled without litigation, and it was thus incidentally advantageous to the trust fund.

In this case one Huter intervened in the receivership case, and asked that a bond and mortgage given by him to the insolvent company be found paid and ordered cancelled. The conclusions of law were against him. He appealed to the Supreme Court, and secured the reversal of a judgment following the conclusions. Huter v. Union Ins. Co., 153 Ind. 204, 54 N. E. Rep. 755. The claim presented by the intervener arises out of services rendered by him as an attorney for Huter in such litigation. Against the claim of the intervener in this case arises the general rule that where the object of the litigation is to diminish or destroy the fund, expenses incurred in its prosecution are not chargeable as expenses. Trustees v. Grenough, 105 U. S. 527.

To escape the effect of the general rule thus stated, the intervener pleaded three excuses which he contended constituted exceptions to such general rules. First: That the result of the appeal was to establish a rule by which many similar claims throughout the State were expeditiously settled without litigation, and its establishment, which could not have been had without the appeal, was to the advantage of the trust, and its cost, therefore, a proper charge against the fund. To this the court answered: "The advantage thus secured was an incidental one. The duties which were performed by the intervener were such as were due from him to his client, whose interest was adverse to the trust, and there is therefore no warrant for his payment out of the fund. Ober, etc., Co. v. Macon, etc., Co., 100 Ga. 635, 28 S. E. Rep. 388."

The second excuse was that the appeal was taken at the suggestion of the judge of the court in which both the receivership and the action against Huter were pending, and in reliance upon a statement by him that he would, in view of the desirability of procuring an early and authoritative construction of the contract involved therein, make an order for the payment of expenses and fees thus incurred by the receiver. To this the court answered: "The allowance of costs, expenses, and attorney's fees incurred in litigation beneficial to a trust estate is largely discretionary with the lower court, and is upon appeal treated as presumptively correct. Stuart v. Boulware, 133 U. S. 78, 10 Sup. Ct. Rep. 242, 23 L. Ed. 568; Trustees v. Greenough, supra. It appears that during the pendency of the appeal an allowance of $125 was made for the expenses thereof. Had the trial court made a further allowance to the intervener, the question of its power to do so would be directly involved, but, having refused to make such allowance, this court can not reverse its action because of previous alleged oral agreements between its judge and the intervener." The third excuse was that after the determination of the appealed cause the intervener aided and assisted the receiver by explaining the effect and force of the decision to various persons who were sent to him by said receiver, and "advised them to settle their claims in accordance therewith." To this the court answered: "The duty of an attorney is to his client, whose corresponding duty it is to reasonably compensate him. Such duty does not consist with the payment of his fees by the opposite party. There is in this case no suspicion of unprofessional conduct or misconduct, and the advice given to such persons was evidently correct and to their interest, but it would be a dangerous precedent to recognize the right of an attorney to charge one party for advice given to the other in pursuance to any kind of an arrangement to which the person advised is not a party."

The Right Bower of the Profession.

Some time in the forties, and before the election of Taylor and Fillmore to the presidency and vice-presidency, Mr. Fillmore was senior member of the law firm of Fillmore, Hall & Havens, of Buffalo, N. Y. The firm was well known all over the State on account of the ability of its members. A young man of the Buffalo bar had brought an action in the supreme court, and the defendant had retained the first named. At the opening of the trial of the case the plaintiff's attorney stated to the jury that he would have to depend entirely upon the justice of his client's case, as the defendant had sought and obtained the aid and counsel of one of the ablest firms of lawyers in western New York, and he might say he had opposed to him the right bower of the legal profession. "What does he mean by that?" said Mr. Fillmore. Mr. Havens—who, like Jerrold and Lamb, would rather lose his best friend than his joke—replied, "He means you." "Yes, I know," replied Mr. Fillmore, "but what does he mean by that particular expression?" "Did you never play euchre?" said Havens. "No," said Fillmore. "Well," said Havens, "in the game of euchre the right bower is the biggest knave in the pack."—Ohio Law Bulletin.

Digitized by Google

Builder's Bond—Mortgage—Condition.

In the case of The American Bonding & Trust Company v. The Progressive Permanent Building, Loan & Savings Association, recently decided by the Maryland Court of Appeals, suit was brought by the appellee against the appellant as surety on a builder's bond. The builder assigned a mortgage on nineteen lots to the appellee to secure a loan of $3,500. The condition of the bond sued on provided that the assignor of the mortgage should "fully complete and finish the buildings and improvements now in the course of erection on said respective lots of ground, fence in said lots, lay the pavements, and put the ground and premises in complete order for occupancy by tenants on or before the first day of July next." Nine of the lots were released and the mortgage was foreclosed on the remaining ten, and the auditor's account showed a balance due the appellee of $950.66. It was practically conceded that none of the houses were completed by July 1. The appellee recovered judgment for the balance found due. The Court of Appeals held that the appellant was not a guarantor of the mortgage debt, and was only responsible for the loss sustained by the appellee because of the non-completion of the houses by July 1.

A railroad company is held, in Kentucky & I. Bridge & R. Co. v. Snydor (Ky.), 68 L. R. A. 183, to be liable for injuries to a car repairer by propelling cars against the one under which he was working, notwithstanding his neglect in failing to place his signal flag in the best position, if those in charge of the train by the exercise of ordinary care might have discovered the flag, where it was placed in time to avoid the injury.

Bills of discovery are held, in Brown v. McDonald (C. C. A. 3d C.), 68 L. R. A. 462, not to be abolished by statutes empowering the Federal courts, in actions at law, to require the parties to produce books and writings, and making parties to suits at law competent witnesses therein.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

GEORGETOWN UNIVERSITY

(FOUNDED 1789.)

SCHOOL OF LAW.

FACULTY.

REV. DAVID H. BUEL, S. J.,
President of the University.
HON. HARRY M. CLABAUGH, LL. D.,
(Chief Justice, Supreme Court, District of Columbia)
Dean of the Faculty and Lecturer on Common Law Pleading and Practice, and Equity Pleading and Practice.
GEORGE E. HAMILTON, LL. D.,
Lecturer on the Law of Wills.
HON. SETH SHEPARD, LL. D.,
(Chief Justice of the Court of Appeals of the District of Columbia)
Lecturer on Constitutional Law, the Law of Corporations, and Equity Jurisprudence.
HON. ASHLEY M. GOULD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Contracts, Criminal Law, and Domestic Relations.
HON. DANIEL THEW WRIGHT,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Insurance.
HON. WENDELL PHILLIPS STAFFORD,
(Associate Justice, Supreme Court of the District of Columbia)
Lecturer on the Law of Agency.
CHAS. A. DOUGLASS, A. B., LL. B.,
Lecturer on the Law of Torts, Negotiable Paper, and Elementary Law.
MICHAEL J. COLBERT, A. M., LL. M.,
Lecturer on the Law of Personal Property and Partnership.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
Lecturer on the Law of Real Estate and the Law of Evidence.

Judge of the Circuit Court: DANIEL W. O'DONOGHUE, A. M., Ph. D., LL. M.
Court of Appeals: HON. JOB BARNARD and MESSRS. LEIGH ROBINSON and J. HOLDSWORTH GORDON.
Quiz Masters: CLARENCE R. WILSON, A. B., LL. M.; DANIEL W. O'DONOGHUE, A. M., PH. D., LL. M., and JAMES S. EASBY-SMITH, A. M., LL. M.
SAMUEL M. YEATMAN, A. M.,
Secretary and Treasurer.
FRANK E. CUNNINGHAM,
Assistant Secretary.

ADDITIONAL LECTURERS IN THE FOURTH YEAR OR POST-GRADUATE COURSE.

HON. HOLMES CONRAD,
(Late Solicitor-General of the United States)
On the History of the Development of Law and Comparative Jurisprudence, and on the History of the English Law.
HON. SETH SHEPARD, LL. D.,
(Chief Justice Court of Appeals of the District of Columbia)
On the History of Constitutional Law and the Foundations of Civil Liberty.
REV. RENE HOLAIND, S. J.,
On Natural Law and Canon Law.
MONROE SMITH, LL. D.,
(Professor in the School of Political Science of Columbia University, New York City)
On Civil Law.
HON. LOUIS E. McCOMAS, LL. D.,
(Associate Justice of the Court of Appeals of the District of Columbia)
On International Law and Foreign Relations of the United States.
RALEIGH C. MINOR, LL. D.,
(Professor of Law in the University of Virginia)
On the Conflict of Laws.
HON. JOHN W. YERKES, LL. D.,
On Railroad Accident Law, Municipal Corporations.
J. NOTA McGILL, LL. M.,
On Patent Law.

Digitized by Google

ALDIS B. BROWNE, LL. B.,
On Jurisdiction and Practice of United States Courts.
WILLIAM C. WOODWARD, M. D., LL. M.,
On Medical Jurisprudence.
GEORGE E. HAMILTON, LL. D.,
On Legal Ethics.
HON. D. W. BAKER, A. M., LL. M.,
(United States Attorney for the District of Columbia)
On General Practice and Exercises in Pleading and Evidence.

The thirty-sixth annual session opens on Wednesday, October 4, 1905, at 6.30 p. m., in the Law School Building, Nos. 506 and 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

The Secretary will be at his office in the Law Building daily from 4.30 to 6.00 p. m. for information, enrollment, payment of fees, etc.

Students proposing to connect themselves with the School are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1322 F street northwest, and at the W. S. Thompson Pharmacy, 703 Fifteenth street northwest, or upon application to the undersigned. S. M. YEATMAN,
37-4t Secretary.

Legal Notices.

FIRST INSERTION.

Francis H. Stephen, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George T. Morgan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. JAMES A. KEMP, Police Headquarters. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,200. Administration. [Seal.] 40-3t

Robert S. Hume and A. S. Worthington, Attorneys

In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In the Matter of the Estate of Ellen O'Brien, Deceased.
No. 10,958. Administration Doc. 29.

It appearing to the court that the notification as to trial of the issues in this case, relating to the validity of the paper writing dated the 10th day of June, A. D. 1902, purporting to be the last will and testament of Ellen O'Brien, deceased, has been returned as to John O'Brien, James V. O'Brien, Ann Fortune, and all unknown heirs at law, next of kin, alienees, and devisees of said Ellen O'Brien, deceased, "not to be found," it is thereupon by the court this 5th day of October, 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the **17th day of January, A. D. 1906**, and that the substance of the issues and the date fixed for the trial, as shown in the margin of this order, be published for three months, once a month during the said period in The Washington Law Reporter, twice a week for not less than four weeks and twice a month for the remainder of the said period in The Washington Post. WENDELL P. STAFFORD, Justice.

MARGIN:

This is to give notice to **John O'Brien, James V. O'Brien, Ann Fortune**, and all unknown heirs at law, next of kin, alienees, and devisees of **Ellen O'Brien**, deceased, that, whereas a certain paper writing, bearing date of the 10th day of June, 1902, has been presented for probate and record in this court as the last will and testament of Ellen O'Brien, deceased, and the validity thereof is contested by certain of the parties in interest, issues have been framed and set for trial by jury in this court on the **17th day of January, A. D. 1906**, presenting the questions whether the said Ellen O'Brien was, at the time of the execution of said paper writing, of sound and disposing mind and capable of making a valid deed or contract; whether said paper writing, or the execution thereof, was procured from her by undue influence, fraud, and circumvention. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.
[Seal]
oct. 6; nov. 3; dec. 1.

Legal Notices.

Barnard & Johnson and George Francis Williams, Solicitors for Complainant

In the Supreme Court of the District of Columbia.
Ernest L. Schmidt, Complainant, v. Ada G. Earhart Ross et al., Defendants. No. 25,522, Equity Doc. 57.

The object of this suit is to sell certain property in the city of Washington, in the District of Columbia, described as follows, and being, to wit: The lots 17, 18, 20, and 21, in Butler's subdivision of lots in square 226, also original lot 1 in square 252, together with the improvements thereon, and to distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and also to substitute a trustee pending any such sale. On motion of the complainant, by his solicitors, Barnard & Johnson and George Francis Williams, it is, by the court, this 3d day of October, A. D. 1905, ordered that the defendants, **Ada G. Earhart Ross, Jessie Elizabeth Earhart McGuire, Virginia Butler Earhart Ferguson, Carter Earhart, and Lyttleton Reese**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 40-3t
[Seal]

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hannah Lavinia Bartlett, Deceased.
No. 13,193. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William Holabird and Joseph Willard Preston, as executors, it is ordered this 4th day of October, A. D. 1905, that notice be and hereby is given to **Agnes Theodosia von Konowsky, Mary Edna Preston, Julia Starr Preston, Joseph Willard Preston, Jr., and Henry Grant Preston**, and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t
[Seal]

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George H. Denney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. FANNIE E. CARTER, Nichols ave., Anacostia, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No 13,173. Administration. [Seal.] 40-3t

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Gustavo L. Roxer, Jr.**, late of Austria, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of August, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. F. WALTER BRANDENBURG, Fendall Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No.13,183. Administration. [Seal.] 40-3t

Digitized by Google

Legal Notices.

Robt. E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Helen Rowland**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. ROBERT E. MATTINGLY, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,167. Administration. [Seal.] 40-3t

A. Coulter Wells, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Buchanan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1905. MARY WEAVER, 1518 Que st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,154. Administration. [Seal.] 40-3t

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Evalyn Doughty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. CAVOUR O. BOHRER, 113 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,906. Administration. [Seal.] 40-3t

P. J. Ryan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert Georgii, Deceased.
No. 13,162. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ignatius Nau, it is ordered this 2d day of October, A. D. 1905, that notice be and hereby is given to **Max Georgii and Herrmann Georgii**, and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

George Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Maria W. Richards**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1905. CHARLES H. RICHARDS, 35 Hillside ave., Montclair, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,089. Administration. [Seal.] 40-3t

Legal Notices.

M. A. Mess, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ottilie Aumann, Deceased.
No. 13,169. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frank A. B. Wünnenberg, it is ordered this second day of October, A. D. 1905, that notice be and hereby is given to **Christian Aumann** (a brother), **Ottilie Aumann** (a niece), and **Walburga Aumann** (a stepsister), and to all others concerned, to appear in said court on **Friday, the 10th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and New Yorker Staatszeitung once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

Sheehy & Sheehy, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Murphy, Deceased.
No. 3356. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, by Catherine J. Murphy, it is ordered this 3d day of October, A. D. 1905, that notice be and hereby is given to **John Murphy, Edward Murphy, and Thomas Murphy**, and to all others concerned, to appear in said court on **Wednesday, the 8th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

F. P. Sheehy, Attorney
In the Supreme Court of the District of Columbia,
Holding a Special Term as a Probate Court.
In re Estate of Michael Burke, Deceased.
Administration, No. 11,704.

Upon consideration of the report herein filed by Charles J. Springmann, executor of the last will and testament of Michael Burke, deceased, showing that he has sold at public auction to John W. Weitzel for twenty-five hundred ($2,500) dollars cash the real estate mentioned and described in the proceedings had in the above entitled matter, namely, lot numbered fourteen (14) in square numbered five hundred (500), improved by premises No. 495 L street southwest, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **4th day of November, 1905.** Provided this order be published once a week for three successive weeks in the Washington Law Reporter before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. [Seal] 40 3t

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold premises No. 909 H street northeast, Washington, D. C., being lot twenty (20) in Moses Kelley's subdivision of square nine hundred and thirty-four (934), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in book W. B. M., page 853, to Paul Leverone for thirty-seven hundred and fifty ($3,750) dollars cash, less three (3) per cent brokerage commission, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **3d day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. [Seal] 40-3t

Digitized by Google

Legal Notices

SECOND INSERTION.

O. B. Glason, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maine, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen J. Thompson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate Given under my hand this 28th day of September, 1905. HOSEA H. CARY, East Pittston, Me. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,186. Admn. [Seal.] 39-3t

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,293.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Loultz and John B. Loultz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law [Seal] Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Legal Notices.

McKenney & Flannery, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline A. Baker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. NATHAN C. TWINING, Bureau of Ordnance, Navy Dept. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,079. Administration. [Seal.] 39-3t

Michael J. Keane, Solicitor

In the Supreme Court of the District of Columbia,

Holding Equity Court.

Mary C. Deery, Complainant, v. John T. Neumeyer et al., Defendants.

In Equity, No. 25,617.

Michael J. Keane, the trustee in the above entitled cause, having reported a sale at public auction of part of lot ten (10), in square five hundred and twelve (512), as more fully described in the bill of complaint filed herein, to R. Harrison Johnson, for the sum of two thousand two hundred and fifty ($2,250) dollars, it is this 22d day of September, 1905, ordered that the said sale be confirmed, unless cause to the contrary be shown on or before the **22d day of October, 1905**; provided a copy of this order be published once a week for three successive weeks in The Washington Law [Seal] Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Wilson Gregory**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of September, 1905. FRANCES G. GREGORY, 2510 M st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,948. Administration. [Seal.] 39-3t

Chas. L. Frailey, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Andrew Wylie**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. HORACE WYLIE, 1205 Vermont ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,174. Admn. [Seal.] 39-3t

Robert E. Mattingly, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Margaret C. Mooney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of September, 1905. BETTIE LE PREUX, 1501 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,127. Administration. [Seal.] 39-3t

Digitized by Google

Legal Notices.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia.

Holding an Equity Court.

Terrence J. McMahon v. the Unknown Heirs, Alienees, or Devisees of Charles Carter, Deceased.

Equity No. 25,554.

The object of this suit is to perfect the title of the complainant to lot numbered thirty-seven (37) in John M. Graham's subdivision of lots in square numbered two hundred and fifty-two (252) in the city of Washington, District of Columbia, as said subdivision is recorded in Liber H. D. C., at folio 184½, in the surveyor's office of the District of Columbia. Upon motion of the complainant, by his solicitor, it is, this 27th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Charles Carter, deceased, cause their appearance to be entered herein on or before the first rule day of November, 1905; otherwise the cause will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based upon the bill and affidavit filed [Seal] herein, that further publication is unnecessary. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-4t

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Mary E. Letts, Deceased.

No. 13,143. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, it is ordered this 27th day of September, A. D. 1905, that notice be and hereby is given to the **unknown heirs and next of kin of said Mary E. Letts, deceased,** and to all others concerned, to appear in said court on **Monday, the 30th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 39-3t

Philip Walker, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Minnesota, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adelaide M. Shedd,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. FREDERICK G. STUTZ, 48 W. 3d st., St. Paul, Minn. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,151. Administration. [Seal.] 39-3t

W. C. Martin, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Reuben Taylor,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. W. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,751. Administration. [Seal.] 39-3t

Legal Notices.

Millan & Smith, Solicitors

In the Supreme Court of the District of Columbia.

Frank Waters et al., Complainants, v. Lavinia Waters et al., Defendants. Equity No. 25,667. Docket 57.

Upon consideration of the report of W W. Millan, trustee, herein filed, showing that he has sold the south forty-five (45) feet of original lot seventeen (17) in square eight hundred and fifty-nine (859) in the city of Washington, District of Columbia, to Charles Specht, for four thousand five hundred dollars ($4,500), it is, this 28th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of October, A. D. 1905.** Provided copy of this order be published [Seal] once in each of three successive weeks before said day in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

THIRD INSERTION.

R. R. Horner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **David Lee,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. JULIA I. DAVIS, 1757 S st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,080. Administration. [Seal.] 38-3t

J. D. Coughlan, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert E Sullivan,** late of the District of Columbia, deceased. All persons having claims against the deceas·d are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **15th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of September, 1905. JOHN D. COUGHLAN, 500 5th st. N. W.; DENNIS J. O'LEARY, 1825 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,137. Administration. [Seal.] 38-3t

J. A. Sweeney, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles Ippolito,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. BENJAMIN W. GUY, 315 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,968. Administration. [Seal.] 38-3t

Fred L. Rosemond, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Ohio, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alice V. C. Williams,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **14th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1905. J. W. CAMPBELL, Cambridge Ohio; FRED L. ROSEMOND, Cambridge, Ohio. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,317. Administration. [Seal.] 38-3t

Digitized by Google

Legal Notices.

Saml. Maddox and H. Prescott Gatley

In the Supreme Court of the District of Columbia, H. Rozier Dulany, Trustee in Bankruptcy of Thomas E. Waggaman v. Thomas E. Waggaman et al. In Equity, No. 25,649.

The object of this suit is to sell a certain tract of land in the District of Columbia known and designated on the plats thereof as Woodley Park, as subdivided by Thomas E. Waggaman and John Ridout, trustees, and distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and to set aside as a preference under the bankrupt law a certain deed of trust, dated July 25th, 1904, and given by said trustees to secure notes held by the Catholic University of America, aggregating $876 168.96. On motion of the complainant, by his solicitors, Samuel Maddox and H. Prescott Gatley, it is by the court this 18th day of September, A. D. 1905, ordered that defendants, **Eugene Ives, Emily A. Shuman, Kate M. Billings, Clara V. Dorsey, James L. McLane, Annie E. Bowie, and E. C. Humphrey,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court: [Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 38-3t

---

Arthur A. Alexander, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James Dorsey,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. DANIEL W. O'DONOGHUE, 412 5th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,149. Administration. [Seal.] 38-3t

---

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold the south 8.29 feet of lot 54, all of lot 55, the north 12.46 feet of lot 56, the south 14 feet of lot 57, and all of lots 58 and 59 in square 302, improved by seven houses numbered 2240, 2242, 2244, 2246, 2250, 2252, and 2254 Eleventh street Northwest, Washington, D. C., for ninety-eight hundred ($9,800) dollars cash, less 3 per cent brokerage commission, it is, by the court, this 19th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **19th day of October, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive [Seal] weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 38-3t

---

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Halbert E. Paine,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of September, 1905. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,113. Administration. [Seal.] 38-3t

Legal Notices.

P. S. Riggs, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **John S. Manning,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15 h day of September, A. D. 1 06; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1905. HELEN P. MANNING, care of R. S. Riggs, 146 Broadway, New York. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia. Clerk of the Probate Court. No. 13,161. Administration. [Seal.] 38-3t

---

[Filed September 18, 1905.]

A. Leftwich Sinclair, Attorney for the District of Columbia

In the Supreme Court of the District of Columbia,
Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 2 o'clock p. m. on the **31st day of October, A. D. 1905,** at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 8 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE [Seal] W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 38-6t

---

Evans Browne, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Napoleon J. T. Dana,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **19th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1905. MABEL LANIER TIDBALL, 210 Walnut st, Montclair, N. J. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,150. Administration. [Seal.] 38-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 41

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - OCTOBER 13, 1905

CONTENTS.

Editorial 641
Notes of Interest 642
Legal Notices 652

Police Judge Alexander R. Mullowney.

Mr. Alexander R. Mullowney, of the District bar, has been appointed by the President as one of the judges of the Police Court of this District, to fill the vacancy caused by the death of Hon. Charles F. Scott. The appointment has been well received, as it is recognized that Mr. Mullowney possesses many qualifications for the position.

Judge Mullowney is a native of Richmond, Va., but the greater part of his life has been spent in this city. He is in the prime of life, being in the forty-first year of his age. He has had a long record of efficient service as assistant United States attorney for the District in charge of prosecutions in the Police Court, to which place he was appointed by United States Attorney A. S. Worthington, and continuing in the discharge of that duty under the successors of Mr. Worthington. Some time after the appointment of Mr. Morgan H. Beach as United States attorney, Mr. Mollowney was called from the Police Court to assume important duties in connection with the office, having especial charge of the matter of drawing indictments, etc.

The position to which he has been appointed is an important and responsible one, requiring qualities of head and heart possessed by few. Those who are acquainted with Judge Mullowney's work as prosecuting officer are confident that in the higher post to which he has been appointed he will prove himself equally capable.

Labor Unions.

An important question arising from a contract made between an employer and a labor union was passed upon by the Supreme Court of Massachusetts in Berry v. Donovan, 74 N. E. Rep. 603. The right of the union, acting under a contract which obligated the employer to employ only union men and to discharge such as refused to join the union, to insist upon the performance of the contract, is denied. The opinion of the court contains an interesting and instructive discussion of the right of a person to dispose of his labor without hindrance, and also enters fully into the interesting relations between labor and capital.

Damages for Lowering Grade of Street.

A rather curious theory as to the measure of damages in an action against a municipal corporation for lowering the grade in front of property abutting upon a certain street, was contended for by counsel for the plaintiff in the case of Swope v. City of Seattle, 78 Pac. Rep. 607. Mortality tables were offered in evidence for the purpose of showing the expectancy of the plaintiffs' lives as a basis for determining the length of time during which there would be the extra burden of climbing additional steps in entering and leaving their homes. No authorities were cited, and the court denied the contention, with the statement that the plaintiff's counsel had not mentioned any rule of law justifying such an offer.

Mortgages Left for Record at Same Moment—Neither Entitled to Priority.

In Borstein v. Schweyer, decided by the Supreme Court of Pennsylvania (61 Atl. 447), it appeared that two mortgages, one given to the widow and the other to the daughter of a deceased, were left for record at the same time, and that the one given the widow was recorded on page 81 and that to the daughter on page 83 of the record. It was contended for the widow that the paging in the mortgage book conclusively established the priority of entry, and therefore the priority of lien. The court, however, denied this contention, holding that neither mortgage had priority over the other, the lien of each commencing at precisely the same moment. It was impossible, said the court, to record the two mortgages at the same instant in the same mortgage book; one had to appear there first, but the page on which it appeared had nothing to do with the lien. That commenced the moment of the arrival of the mortgage in the recorder's office was noted by the

Digitized by Google

recorder, and in contemplation of law it was recorded from the moment it was left for record. As a matter of universal experience, the court further remarks, we know that mortgages and deeds are not actually recorded as soon as they are brought into the office, because it is not possible to so record them.

Right of Jurors to Consider Their Own Knowledge and Experience.

[Reprinted from the Bench and Bar.]

The right of jurors to consider their own personal knowledge and experience, aside from the evidence introduced on the trial of a cause, which may be called experiential notice, for lack of a better term, is perhaps somewhat analogous to the function of judicial notice exercised by the court. The two topics possess also in common the characteristic of being somewhat unsettled in limit and extent, so far as the rules deducible from adjudged cases are concerned.

The thought which naturally occurs to one at the outset is that in arriving at a determination upon the issues of fact presented in a cause, it is the strict and invariable duty of jurors to consider only the evidence presented, disregarding all other sources of knowledge, information, or belief. Next in order, the qualification would probably present itself that at all events, in weighing the evidence and passing upon the credibility of the witnesses, the jurors must, of necessity, resort to that fund of knowledge which is the sum of the experience and observation of their own lives, otherwise called "common sense." Beyond this elementary principle and its qualifying consideration, if the latter may be properly so termed, stretches out a wide field of speculation and conjecture, so that whenever a judicial decision clearly settles any portion of the doubtful or disputed territory, it should be eagerly seized upon, with a feeling of thankfulness for small favors.

The case of People ex rel. Lovett v. Miller, 101 App. Div. 291, decided by the Appellate Term, Third Department, in January of this year, may therefore be hailed with a certain satisfaction, for in it it was distinctly declared that upon an issue as to the value of the services of a real estate appraiser, a jury, or the auditing officer of a municipal corporation, had clearly the right to consider their own knowledge and their own notions of the value of such services, aside and apart from and independent of the testimony of experts thereupon. In this connection the case of Head v. Hargrove, 105 U. S. 45, was cited. This was an action to recover the value of legal services, and in the course of its opinion the Supreme Court of the United States, through Mr. Justice Field, observed:

"It was the province of the jury to weigh the testimony of the attorneys as to the value of the services, by reference to their nature, the time occupied in their performance and other attending circumstances, and by applying it to their own experience and knowledge of the character of such services. To direct them to find the value of the services from the testimony of the experts alone, was to say to them that the issue should be determined by the opinions of the attorneys, and not by the exercise of their own judgment of the facts on which those opinions were given. The evidence of experts as to the value of professional services does not differ in principle from such evidence as to the value of labor in other departments of business, or as to the value of property. So far from laying aside their own general knowledge and ideas, the jury should have applied that knowledge and those ideas as to the matters of fact in evidence in determining the weight to be given to the opinions expressed, and it was only in that way that they could arrive at a just conclusion. While they can not act in any case upon particular facts material to its disposition resting on their private knowledge, but should be governed by the evidence adduced, they may, and to act intelligently they must, judge of the weight and force of that evidence by their own general knowledge of the subject of inquiry. If, for example, the question were as to the damages sustained by a plaintiff from a fracture of his leg by the carelessness of a defendant, the jury would ill perform their duty, and probably come to a wrong conclusion, if, controlled by the testimony of the surgeons, not merely as to the injury inflicted but as to the damages sustained, they should ignore their own knowledge and experience of the value of a sound limb. Other persons besides professional men have knowledge of the value of professional services, and, while great weight should always be given to the opinions of those familiar with the subject, they are not to be blindly received, but are to be intelligently examined by the jury in the light of their own general knowledge; they should control only as they are found to be reasonable."

In Anthony v. Stinson, 4 Kan. 211, a question almost identical with that passed upon by the United States Supreme Court in the case just referred to, was decided, and in the same way. An instruction given to the jury had told them that the testimony of certain lawyers as to the value of professional services should be the guide of the jury, and that they should be governed by it in finding the value of the services rendered. This was held to be error, the appellate court observing that the jury were not to be instructed as to what part of the testimony before them should control their verdict. In order to control the verdict, it was declared, the testimony of experts should be of such a character as to outweigh by its intrinsic force and probability all conflicting testimony, and that the jury should not be required to accept, as a matter of law, the conclusions of the witnesses instead of their own.

In Patterson v. Boston, 20 Pick. (Mass.) 159, the question was as to the damages to be awarded to the plaintiff for his property, taken to widen a street in Boston. The trial court instructed the jury that in estimating the amount of the damages, if any of them knew of their own knowledge any material fact which bore upon the issue, he ought to disclose it and be sworn, and communicate it to his fellows in open court in the presence of the parties, but that in making up their verdict they might rightfully be influenced by their general knowledge on such subjects, as well as by the testi-

Digitized by Google

mony and opinions of witnesses. The case being taken to the Supreme Court, it was held that these directions were not open to exception. Said Chief Justice Shaw, speaking for the court:

"Juries would be very little fit for the high and responsible office to which they are called, especially to make an appraisement which depends on knowledge and experience, if they might not avail themselves of those powers of their minds when they are most necessary to the performance of their duties."

In Murdock v. Sumner, 22 Pick. (Mass.) 156, the same court, speaking also through Chief Justice Shaw, said that "the jury very properly exercise their own judgment and apply their own knowledge and experience in regard to the general subject of inquiry." In that case a witness had testified as to the quality, condition, and cost of certain goods, and given his opinion as to their worth, and the court said that "the jury were not bound by the opinion of the witness. They might have taken the facts testified by him as to the cost, quality, and condition of the goods, and come to a different opinion as to their value."

Another Massachusetts case, decided in 1899 (Leary v. Fitchburg R. Co., 173 Mass. 373), in which the opinion was delivered by the distinguished Mr. Justice Holmes, now a member of the United States Supreme Court, seems inclined to the view that a jury may, as a matter of their own knowledge and experience, take notice of the fact that the side of a train toward the railroad station is the usual and proper side for passengers to alight from. In that case one Leary, plaintiff's decedent, had been found under the wheels on the wrong side of the train. "How he got there," observed Mr. Justice Holmes, being "a pure matter of conjecture." A verdict had been directed for the defendant, which ruling was sustained on appeal, the court, through the learned jurist referred to, declaring:

"In all cases of this sort, where the evidence stops short of direct testimony to the personal causes of the accident, the question is whether the jury are warranted by common experience in saying that such accidents are so much more likely to be due to the defendant's fault than to any of the other possible causes, that they ought to presume that this one was due to such fault. This is a practical question of experience, and depends upon the nature of the particular case."

The appellate division of the New York Supreme Court, however, at its April term of this year, reversed a judgment for the plaintiff in a negligence suit for what was held to have been error in the trial court in charging the jury that they might, in weighing the testimony of the witnesses, consider their own experience as to whether a man 77 years of age would be likely to attempt to pursue a moving electric car and try to board it. The plaintiff, at the age stated, testified that he attempted to embark upon one of the defendant's cars while it was at a standstill; that he put his foot on the car, when the car started and threw him upon the street. This testimony was contradicted by several witnesses, but the case was submitted to the jury, who found a verdict for the plaintiff. The appellate division after observing that it was a serious question whether the verdict was not against the weight of evidence, continued:

"There is, however, one portion of the charge to the jury which possibly explains this verdict, which was excepted to, and which requires us to order a new trial. The learned trial court called the attention of the jury to the fact that the plaintiff was an interested witness and was not corroborated by any direct evidence, and then continued: 'We may draw the reasonable inferences which, as reasonable men of the world, we are apt and accustomed to draw, and put them alongside of or connected with the facts proved, and say whether the story is probable, is reasonable, or improbable or impossible. Each side asks you to draw an inference. The plaintiff says: Is it reasonable to believe that a man of this age would run after a car and try to board it? You can ask yourselves the question whether people do that sort of thing in the city of New York.'"

Mr. Justice Ingraham, who delivered the opinion of the court, concluded:

"I think it was clearly error to allow the jury to consider what they thought people did in the city of New York in deciding the case. The jury were instructed that they would ask themselves the question whether people do that which the witnesses testified that the plaintiff did. We can not tell what influence this had on the jury, but it might well be that the jury would consider that people in New York did not run after these street cars, and that the story told by the witnesses for the defendant was not, therefore, a true account of the transaction."

[In this opinion Van Brunt and McLaughlin, JJ., concurred without qualification; Patterson and Laughlin, JJ., concurred on the ground that the verdict was against the weight of evidence.]

Probably, however, the most familiar example of the exercise by the jury of this function of "experimental" notice arises in negligence cases, in which the question whether or not the particular act was negligent, depends upon whether or not injurious consequences should have been anticipated by a person of reasonable and ordinary foresight, prudence, and discretion. This issue is, as a general rule, always for the jury, and it is difficult to see how it can be determined otherwise than in the light of their own knowledge, experience, and common sense. For example, where the lock on the door of an elevator shaft was in such condition that the door might be opened either by its own weight or by some person from outside the shaft, and the plaintiff walked into the opening and was injured, it was held that whether or not the injurious consequences which resulted from the condition of the lock were such as ought reasonably to have been contemplated or foreseen was for the jury. Colo. Mtge. and Ins. Co. v. Rees (Colo.) 42 Pac. 42. But of course, like other issues of fact, if the court can say upon the evidence that any finding that the defendant could or should have contemplated or foreseen the occurrence of the injuries would be utterly unwarranted, and that there is no evidence from which such

Digitized by Google

a conclusion could be drawn, then the exercise of the function discussed will not be called into play, as the issue should not be left to the jury at all.

So in the case of Heffernan v. Arnold, 48 App. Div. 419 (Third Dept. 1900), which was an action to recover damages for personal injuries, it appeared that the defendants, who were truckmen, delivered two heavy iron girders at a building in process of construction, placing one on top of the other, with square sticks of timber between; that the builder, without, so far as appeared, the knowledge of the defendants, substituted iron rollers for the square pieces of timber between the girders, also placing wooden chuck blocks to hold the girders in position. Thereafter the defendants were directed by the builder to deliver a third girder with one end at the opening of the building, and while backing the truck with this object in view, the rear wheels of the truck unexpectedly slid on the pavement, bringing the end of the girder on the truck in contact with the end of the upper girder lying on the ground, causing it to move upon the rollers and fall and strike the plaintiff, who had just alighted from another truck loaded with stone to be delivered at the building. It was held upon such facts the duty of the court to say that the defendants could not, by the exercise of reasonable care and prudence, have anticipated the happening of such an accident, and that it was error, therefore, to submit the question of the defendant's negligence to the jury.

Thus, also, in the case of Clare v. N. Y. etc., R. Co., 167 Mass. 39, where there was no direct testimony as to the cause of the accident, the court said:

"Such a case is not to be left to the jury unless the court can say that the jury are warranted from their experience as men of the world, in saying that the accident is more likely to happen from the alleged defect than from other possible causes. If, on the other hand, the court can see that common experience does not warrant such judgment, it is its duty to direct a verdict. . . . It is a practical question with reference to the particular facts of the case, but it is one of those practical questions upon which the court have to exercise their judgment in the first place before submitting it to anyone else."

The doctrine of res ipsa loquitur has intimate connection with, if not its foundation in this function of "experiential" notice. Indeed, the Massachusetts Supreme Court, speaking again through Mr. Justice Holmes, in Graham v. Badger, 164 Mass. 42, 47, used this language:

"Res ipsa loquitur—which is merely a short way of saying that, so far as the court can see, the jury from their experience as men of the world, may be warranted in thinking that an accident of this particular kind commonly does not happen except in consequence of negligence, and that, therefore, there is a presumption of fact, in the absence of explanation or other evidence which the jury believe, that it happened in consequence of negligence in this case. Presumptions of fact, or those general propositions of experience which form the major premises of particular conclusions of this sort, usually are for the jury."

It has also been held that a jury is at liberty to consider their own knowledge of the instinct of self-preservation and its natural effect upon human conduct. Chicago, etc., R. Co. v. Beaver, 119 Ill. 34; Hopkinson v. Knapp Co., 92 Ia. 328. But while, as already stated, the jury may employ their general experience in judging of a witness' credibility (Jenney Electric Co. v. Branham, 145 Ind. 314), yet any undisclosed knowledge of particular facts bearing upon the character or veracity of a particular witness should not be considered by any one or more members of the jury. See Schmidt v. Ins. Co., 1 Gray (Mass.), 529.

Provocation in Mitigation of Damages.

[New York Law Journal.]

This journal for Tuesday last contained a note of the case of Schoemaker v. Jackson in the Supreme Court of Iowa (July, 1905, 104 N. Y. 503), wherein it was held that one who has deliberately decided to assault another can not show in mitigation of damages a provocation to the assault. The court very properly said that "provocation to be admissible in mitigation of damages must be so recent and immediate as to induce a presumption that the violence was committed under the immediate influence of the passion thus wrongfully excited."

The recent case of Shockey v. McCauley, in the Court of Appeals of Maryland (June, 1905, 61 Atl. 583), lays down another obviously just principle with regard to the mitigation of damages by provocation. It was held that the fact that slanderous words were uttered under the influence of passion or excitement, or under circumstances of great provocation, can not be considered in mitigation of damages, unless the passion or provocation was attributable to plaintiff. The court uses the following langurge, which, although treating specifically of actions for defamation, would seem to be applicable generally whenever the question of mitigation is raised:

"The defendant's third prayer, to the effect that if 'the slanderous words were uttered under the influence of passion or excitement, or under circumstances of great provocation,' such facts could be considered in mitigation of damages, was rejected. The jury was not required to find, in addition, that the passion and excitement was produced by the immediate provocation of the appellee. It has frequently been held that the jury may, in estimating damages in cases of slander, take into account the excitement wrongfully provoked by the plaintiff. Newell on Slander and Libel, 2d ed., 907; Thomas v. Fischer, 71 Ill. 576; McClintock v. Crick, 4 Iowa, 453; Moore v. Clay, 24 Ala. 235: 60 Am. Dec. 461. It seems to be entirely reasonable to permit the defendant, in a suit for slander or libel, to offer evidence of provocation created by the improper conduct of the plaintiff. As Chancellor Walworth said, in Maynard v. Beardsley (7 Wend. 564; 22 Am. Dec. 595): 'The law makes allowances for the infirmities of human nature.' The weight of authority seems to be that the defendant may show, in mitigation of damages, that the words were uttered in heat of passion or under great excitement, whenever such condition has been caused by

Digitized by Google

the wrongful and proximate act of the plaintiff. 18 A. and E. Enc. of Law, 1109.

"In Watts v. Fraser (7 Car. & Payne, 369), the defendant was allowed to offer evidence showing provocation, and this court, in Botelar v. Bell (1 Md. 173), referring to that case, said there was a vast deal of good sense in the view that 'a man who indulges in slanderous language towards another, when he has been provoked to it by a long series of abuse, is less culpable in the eye of the law and of morals than he who, from a fiendish dislike to his fellow man, or from a spirit of idle gossip, invents slander against his neighbor.' But there are no authorities that go so far as to support the contention that any passion or excitement or provocation, no matter how or by whom caused, can be given to the jury, and no sound reasons can be assigned for so holding. Certainly passion or provocation created by causes for which the plaintiff is not responsible should not furnish a mitigation of the grave offense of maliciously slandering the character of another."

According to the general policy of the law there might be more plausible ground for arguing that stress of passion for which the victim is in no wise responsible, operated as an extenuation of criminal offenses than for relying on a similar excuse in mitigation of damages recoverable in a civil action. Assuredly the fact that some other person had provoked the defendant to anger should not exonerate him from any liability for injury he has wrought to an entirely innocent plaintiff.

Prohibition of Marriage of Epileptics.

[New York Law Journal.]

The opinions in Gould v. Gould in the Supreme Court of Errors of Connecticut (August, 1905, 61 Atl., 604) are interesting upon a question of constitutional law which has been raised by comparatively recent legislation in several States. The Connecticut provision in question is as follows:

"No man or woman, either of whom is epileptic, imbecile, or feeble-minded, shall intermarry, or live together as husband and wife, when the woman is under 45 years of age. Any person violating or attempting to violate any of the provisions of this section shall be imprisoned in the State prison not less than three years."

Similar acts have been passed in Michigan, Minnesota, Kansas, and Ohio. They result from an agitation that has been carried on for many years looking to the prevention of reproduction by persons who are grievously diseased in mind or body. The following extract from the opinion by Judge Baldwin seems very clearly to uphold the constitutionality of such a law:

"Was the statute a valid act of legislation? It forbade the marriage of certain classes of persons under any circumstances. One of these, only, it is now necessary to consider—that of epileptics. The provisions of the act of 1895 were separable with respect to the different classes of persons with whom it deals, and, so far as this action is concerned, it is enough if it can be supported as to marriages contracted after its enactment by those in the condition of the defendant (Pub. Acts, 1895, p. 667, chap. 325). The constitution of this State (preamble and art. 1, sec. 1) guarantees to its people equality under the law in the rights to 'life, liberty, and the pursuit of happiness' (State v. Conlon, 65 Conn. 478, 489–491, 33 Atl. 519, 31 L. R. A. 55, 48 Am. St. Rep. 227). One of these is the right to contract marriage, but it is a right that can only be exercised under such reasonable conditions as the legislature may see fit to impose. It is not possessed by those below a certain age. It is denied to those who stand within certain degrees of kinship. The mode of celebrating it is prescribed in strict and exclusive terms (Gen. St. 1902, sec. 4538). The universal prohibition in all civilized countries of marriages between near kindred proceeds in part from the established fact that the issue of such marriages are often, though by no means always, of an inferior type of physical or mental development.

That epilepsy is a disease of a peculiarly serious and revolting character, tending to weaken mental force, and often descending from parent to child, or entailing upon the offspring of the sufferer some other grave form of nervous malady, is a matter of common knowledge, of which courts will take judicial notice. State v. Main, 69 Conn. 123, 135, 37 Atl. 80, 36 L. R. A. 623, 61 Am. St. Rep. 30. One mode of guarding against the perpetuation of epilepsy obviously is to forbid sexual intercourse with those afflicted by it, and to preclude such opportunities for sexual intercourse as marriage furnishes. To impose such a restriction upon the right to contract marriage, if not intrinsically unreasonable, is no invasion of the equality of all men before the law, if it applies equally to all, under the same circumstances, who belong to a certain class of persons, which class can reasonably be regarded as one requiring special legislation, either for their protection or for the protection from them of the community at large. It can not be pronounced by the judiciary to be intrinsically unreasonable if it should be regarded as a determination by the general assembly that a law of this kind is necessary for the preservation of public health, and if there are substaintial grounds for believing that such determination is supported by the facts upon which it is apparent that it was based. Holden v. Hardy, 169 U. S. 366, 398, 18 Sup. Ct. 383, 42 L. Ed., 780; Bissell v. Davison, 65 Conn. 183, 192, 32 Atl. 348, 29 L. R. A. 251.

There can be no doubt as to the opinion of the general assembly, nor as to its resting on substantial foundations. The class of persons to whom the statute applies is not one arbitrarily formed to suit its purpose. It is certain and definite. It is a class capable of endangering the health of families and adding greatly to the sum of human suffering. Between the members of this class there is no discrimination, and the prohibitions of the statute cease to operate when, by the attainment of a certain age by one of those whom it affects, the occasion for the restriction is deemed to become less imperative. . . . Laws of this kind may be regarded as an expression of the conviction of modern society that disease is largely preventable by proper precautions, and that it is not unjust in certain cases to require the observation of these,

Digitized by Google

even at the cost of narrowing what in former days was regarded as the proper domain of individual right. It follows that the statute in question was not invalid as respects marriages contracted by epileptics after it took effect."

The extract of the practical effect of legislation of this character yet remains to be seen. Undoubledly the mere presence of such an act on the statute book will deter a certain limited number of persons from contracting marriages of the prohibited kind. The tangible result of the Connecticut case was of comparatively slight significance. It was held under the general law of Connecticut that, while a marriage contracted in contravention of the statute was not void, yet as the fact that the defendant was an epileptic had been concealed from the plaintiff, she might be entitled to a divorce, or a decree of nullity, on the ground of fraudulent concealment. Such result is substantially no broader than the one reached by the New York Court of Appeals in Di Lorenzo v. Di Lorenzo, 174 N. Y. 467.

In such a case as the one reported and in other cases that may arise, where marriages are contracted with epileptics or between epileptics with mutual knowledge of the facts, the question of the enforcibility of the criminal penalty provided will have to be tested. Undoubtedly the legislation is salutary, and juries ought to convict and substantial terms of imprisonment should be imposed as punishment upon persons convicted. If at first the average jury be not disposed seriously to enforce the law, discussion and agitation should be continued until public sentiment sanctions and demands it.

Direction to Executor to Erect Monument.

[New York Law Journal.]

In re Koppicus' Estate in the Court of Appeals, Third District of California (May, 1905, 81 Pac. 732), an unusual question was passed on, as we think correctly.

It was held that where testatrix's will directed that she be buried in a certain cemetery and that a monument should be erected over her grave, and she was buried there with the knowledge and consent of her husband, and the body remained so buried for over a year, but, after a petition was filed asking a sale of real estate for the purpose of raising funds to erect the monument, the husband caused the remains to be cremated, and the ashes were not returned to the grave, the executor was, nevertheless, obliged to erect a monument on the spot where testatrix had been buried. The court said in part:

"It is contended by the appellant that the testatrix, by the direction in her will, attempted to dispose of her dead body. But, supposing she did so intend, her intention was carried into execution, not against the wish of her husband, who would have the right to dispose of it himself, but it was with his knowledge and consent that the body was buried in the Georgetown Cemetery. The case is unique, and we have failed to find any case similar in any of the books of reports. The husband allowed the said body of his wife to remain where it had been buried for over a year, and made no move toward removing and cremating it until after the petition was filed by which the court was asked to direct a sale for the purpose of raising funds with which to erect the monument. We think the court was committing no error when it said that her grave was located and established in the Georgetown Cemetery, and that when, a year later, the husband removed the remains from the grave and had them cremated, the establishment and location of the grave was not changed so as to defeat the direction of the testatrix; that, for all purposes of the will and the duty of the executor, the grave remained the same, and for all purposes of this case became a certain, fixed, and definite place, a grave over which the executor must erect a monument, as contemplated in the will."

It may be suggested in addition to what the court has said that commemorative monuments are often erected at places other than where the remains of the subject of commemoration are buried, and that it was eminently proper to effectuate the testator's intention approximately and as far as possible, independently of whether her grave permanently remained where the monument was to be erected.

Liability of Landlord for Repairs in the Absence of Express Agreement.

[Canadian Law Review.]

The duties between landlord and tenant arise from contract, and it is more than fifty years since it was held in Gott v. Gandy, 2 E. & B. 845, that, in the absence of express agreement no obligation to do substantial repairs on notice will be implied from the relation of landlord and tenant. It is often the practice for landlords, in their own interest, and without assuming liability, to do external repairs, and attempts have from time to time been made to show that in particular circumstances the landlord is subject to some duty with regard to repairs, independently of any contract. In the case of Hargroves v. Hartopp, decided by the Divisional Court on the 23d of January last, the plaintiffs were tenants of a floor in a building of which the defendants were landlords. A rain-water gutter in the roof, the possession and control of which was retained by the defendants, became stopped up. Notice of the stoppage was given by the plaintiffs to the defendants, but the defendants neglected to have the gutter cleared out till after the lapse of four or five days from the receipt of the notice, and in the meantime the plaintiffs had suffered damage by reason of rain-water having found its way into their premises in consequence of the stoppage. It was argued, as might have been expected, that, in the absence of express agreement, the defendants were subject to no duty with regard to the repair of the gutter; that the negligence with which they were charged was an omission and not a commission; and that no cause of action was established. The Divisional Court declined to adopt this view, and held that the defendants were liable, on the ground that it must be implied from the fact that they kept the roof in their possession and the plaintiffs had no special privilege to go there, that they were responsible for not clearing the gutter after reasonable notice of its condition.

Digitized by Google

Burden of Proof in Case Passenger is Injured in Collision.

[Case and Comment.]

In Black v. Boston Elevated R. Co., 68 L. R. A. 799, occurs a statement which, on its face, appears to be so at variance with the ordinary understanding of the law upon the subject as to attract attention. A passenger on a street car, who was himself in the exercise of due care, was injured by a collision of the car with a team at a road crossing. He brought an action to recover for his injuries, and the court stated that "to recover the burden was on the plaintiff to prove that the collision was caused by the negligence of the defendant."

The opinion is quite widespread that when a passenger, being in the exercise of due care, is injured through the operation of the car, it is sufficient to warrant a recovery for him to show his injury. The broad statement of the court in the case referred to would seem to indicate that that rule did not apply in case the injury was caused by the act of the carrier combined with that of a stranger. The actual decision did not go quite to that extent, the court holding merely that no recovery could be had if the evidence, so far as it went, tended to show that the collision was due to the negligence of the stranger.

The case referred to is the subject of an annotation in which it is stated that it is believed that there is not an authority but which either holds or concedes that, in an action by a passenger for hire against the carrier, no success awaits the plaintiff until he has shown negligence on the part of the carrier, and that at the commencement of the trial of such an action the plaintiff assumes the burden of proving such negligence. As to whether that burden, by reason of proof made by the plaintiff, or of admissions by the defendant in his favor, is ever shifted to, or cast upon, the defendant; or whether it remains throughout the trial upon the plaintiff, is a question upon which the courts of the various jurisdictions would appear to differ. But it is intimated that the apparent difference between the courts is due to the use of language and terms which do not indicate exactly what the court meant to say. Most of the cases concede that when a plaintiff shows the injury, he raises a presumption of negligence on the part of the carrier, and some of the cases say that the effect of this is to cast or shift the burden of proof onto the carrier, while others hold that it remains upon the plaintiff throughout the trial.

The annotator suggests that where the court says that, after the presumption of defendant's negligence has arisen, the burden is thereafter on the carrier, an inspection of the context will disclose the fact that what it really meant to be understood to say is that, by means of the facts creating such presumption, the plaintiff has sustained or discharged the burden of proof, and thereby established a prima facie case which will entitle him to judgment in the absence of explanation or contradiction. It will thus be seen that there is in fact very little difference in the courts, and that the statement which attracted attention in the Black case may be construed to mean no more than that plaintiff must prove his case, but that he may be aided by the presumption of negligence, unless facts appear which destroy that presumption. The annotator concludes that the weight of authority would seem to be in favor of the theory that, when a passenger is injured under the circumstances shown in the Black case, the presumption of the carrier's negligence arises which will support an action, and which, unexplained or uncontradicted, will enable the plaintiff to recover. He states that there will not be found substantial variance between the cases upon the subject, and even of those cases which say that, once the presumption has arisen, the defendant must show affirmatively, must satisfy the jury of the absence of negligence, it may be regarded that what is intended by such statements is that, as the plaintiff, by aid of legal presumption, has make a prima facie case, it is incumbent upon the defendant to make such proof as will refute it in order to succeed. But he concludes that the position of those who hold that the onus probandi which rests at commencement with the one alleging the negligence of the carrier as the direct and proximate cause of the injury continues to be so during trial, is the more logical.

We can, therefore, conclude that the common opinion that the passenger makes his case when he shows the injury is not necessarily in conflict with the statement in the Black case that the burden of proving the carrier's negligence was upon him, since proof of the injury raises a presumption of negligence which, unexplained, will warrant a recovery; but in the Black case the plaintiff was defeated because additional circumstances were shown by plaintiff's own proof which neutralized the effect of the presumption, since they indicated that the negligence was caused by the stranger, in which case, of course, the carrier would not be liable.

Mistaken Identity.

"A Barrister" writes to the Pall Mall Gazette: Judges no less than juries are often impressed by hearing that the witness picked out the prisoner from a group of seven or eight persons without doubt or hesitation. Now it is plain that the weight to be attached to this evidence must vary greatly with the circumstances. Take the case of Beck. The defrauded women complained to the police and gave descriptions of the man who defrauded them. I think the commission ought to have asked to see these descriptions if they had been preserved, but there is little doubt that they stated that the swindler was an elderly man with a white moustache, who wore spectacles. If so, what weight should be attached to an identification which consisted of picking Beck out of seven or eight other men, none of whom had a white moustache or wore spectacles? The picking-out might impose on the jury, or even on a careless judge, but in reality the witness had Hobson's choice—that or nothing.

This entire picking-out system is wrong. It would be far better to make the men pass in single file before the witness. In that case an eager witness would sometimes identify an early comer before the real suspect appeared,

Digitized by Google

while a more cautious witness might allow the entire number to pass while waiting for the right man to appear. Yet in both instances, if the eight or nine men were simultaneously present, the two witnesses might select the same man. Prepossession has much to do with the identification. If the witness is led to believe that the criminal will certainly be found among the batch presented to him, his task is reduced to picking out the person from among that batch who bears most resemblance to the criminal. And this prepossession may arise from other causes than information derived from the police. In the Beck case it is not at all unlikely that if the women had been closely questioned it would have been found that some of the witnesses were told by others that they had seen the man in custody and that he was the right man before they were allowed to see him; and they were very possibly also informed that he was not arrested by the police because they thought he answered the description of the swindler, but that he had been identified by a defrauded woman who met him in the street and gave him in charge to a constable.

While I think single file preferable to the present system, I think it might be better still if the witness were brought to see a batch of prisoners at each of three or four police stations, no hint being given beforehand as to the station at which the suspected person was in custody; and where there were several witnesses they should visit these stations in a different order. There would here again be the chance of a hasty witness fixing on the person at the first station who most resembled the culprit, while a witness of a different temperament would wait for the last station and then perhaps find nobody there who bore even a distant resemblance to the man who was wanted. Of course, careful notes should be made of what actually occurred on each such occasion. The police officer in charge should, I think, make and sign a contemporaneous note, allowing both the witness and the prisoner to see it at the time, the notes being subsequently produced at the trial.

Unfair Competition.

[New York Law Journal.]

In DeLong Hook & Eye Co. v. Francis Hook & Eye & Fastener Co., decided in the United States Circuit Court, W. D., New York, in June, 1905, 139 Fed. 146, it was held that where cards used by complainant and defendant, containing competing hooks and eyes, which were attached thereto by thread, were substantially the same in size, color, and form, and, although the words printed on defendant's card were different, the style, printing, spacing, etc., were made to simulate complainant's card as closely as possible, and defendant later simulated complainant's mode of fastening the invisible eyes to the card, though stitched in a different manner, defendant was guilty of unfair competition.

In Revere Rubber Co. v. Consolidated Hoof Pad Co., decided in the United States Circuit Court, S. D. New York (June, 1905, 139 Fed. 151), it appeared that complainant and defendant both manufactured rubber hoof pads so similar in appearance that a purchaser would hardly distinguish the one from the other, both being adapted and applied to the same use. The pads were sold in sharp competition; and there was evidence that defendant's pads were inferior to complainants, and were sold at a less price. Complainant's predecessor first began making the pads under the firm name of "Air Cushion Rubber Pad Company," and the pads became known as "Air Cushion Pads," and as "A. C. Pads." After complainant's pad had been patented defendant began the manufacture of its pads, on which it stamped the name "Air Cushion," and below used the words, "Consolidated Hoof Pad Co., 18 Vesey st., N. Y.," and filed and registered the letters "A. C." as a trade-mark. It was held that defendant's acts in thus imitating complainant's goods constituted unlawful competition, which complainant was entitled to restrain.

In the latter case the court also specifically held that "when one manufacturer or dealer has used certain letters as a trade name until his goods have come to be known and called for generally by that name, a competitor in the same business can not gain any right, superior or otherwise, by procuring such letters (or such name, if it be a name) to be registered under the trade-mark laws as his or its trade-mark. Such larceny as this is neither encouraged, sanctioned, nor legalized. Glencove Mfg. Co. v. Ludeling, C. C., 22 Fed. 823; Welsbach L. Co. v. Adam, C. C., 107 Fed. 463; Brower v. Boulton, 58 Fed. 888, 7 C. C. A. 567."

These decisions are cited, not because they involve anything in the nature of legal novelty, but merely because they were in two of the most recent cases of a class constantly passing through the courts. A few years ago Judge Lacombe, in deciding an unfair competition case, used some satirical language that aptly applies to a large proportion of the litigations of this character. He said, in effect, that, as the defendant claimed that he had used every effort to avoid simulation of the appearance of the complainant's goods, packages, etc., it would be well if defendant would endeavor directly to imitate the complainant's business paraphernalia, because in that event he might succeed in making the merchandise of the respective parties distinguishable. There has lately been much discussion of business immorality on a large scale by persons acting in a trust capacity. Another phase of the same immoral tendency is exhibited in the constant succession of cases in which obviously the defendant has imitated another person's business appliances closely enough to hope to deceive the public, yet not so closely as not to hope to escape legal intervention. It is to be said that the courts are quick to penetrate specious pretenses and grant relief to persons whose rights are substantially invaded.

The right of a tenant to cut for firewood trees planted to meet some special purpose of the landlord, or to cut trees growing in their native state, is denied in Anderson v. Cowan (Iowa), 68 L. R. A. 641, unless they are such as are customarily cut down for that purpose. A note to this case collates the other authorities on right of tenant to cut wood for fires or fences.

Digitized by Google

Architect's Plans.

We shall probably hear no more of the question whether an architect who has been retained to prepare plans and drawings for a building is entitled to retain these plans and drawings after he has recovered his proper remuneration. In Gibbon v. Pease, an appeal from a judgment of Ridley, J., was brought recently before the Court of Appeal. The action was by a building owner to recover from an architect plans, specifications, and other documents which he had prepared on behalf of the building owner. The defense was that there was a custom in the profession under which the defendant was entitled to retain the plans. At the trial it was proposed to call a large body of witnesses to give evidence of this custom, but the learned judge refused to receive the evidence, and directed a verdict for the plaintiff. There has always been a strong disinclination among architects to hand over the plans and drawings which they have prepared to their employer or to another architect. So far back as the year 1870, the claim to retain them was insisted upon in the document called the Professional Practice as to the Charges of Architects, published by the Royal Institute of British Architects, and it was also raised in the case of Ebdy v. McGowan, which came before the Court of Exchequer in that year.

In that case the plaintiff had been employed to prepare plans and get tenders for a vicarage, and it was provided that his charges were to be on a lower scale if no invitations for tenders were issued. The plans were prepared but the defendant decided not to proceed with the work, and asked for the plans on payment of what was due. The plaintiff declined to give them up, relying upon a custom among architects to retain the plans if the work was not proceeded with. The court of exchequer held that this custom, even if proved, was unreasonable, Bramwell, B., saying that it was contrary to reason, good sense, and justice that the architect should retain the plans for which he had been paid. Ebdy v. McGowan was not reported in the Law Reports, the point being probably thought too clear for a report, but the claim continued to be made, though, from a practical point of view, there is little to recommend it. It seems only reasonable that the plans, as records of the construction of a building, should pass into the custody of the owner. Without the plans and drawings there might be great difficulty in tracing the mechanism of such things as house drains, chimney flues, and other arrangements which are not readily accessible. We believe that Mr. Ayrton, as first commissioner of public works, claimed the drawings of the houses of Parliament from the son of the architect, and recovered them. In Gibbon v. Pease, the architect could only contend that it was the essence of contract that certain work should be done, and not that certain things should be sold. But this argument would support an artist who had painted a portrait and received his price in refusing to give it up. The court was clearly of opinion that the true effect of the contract was that the plans belonged to the building owner, and the architect must in future be satisfied with a copy of them.—Solicitors' Journal.

Adverse Possession—Abandonment.

[Central Law Journal.]

A purchaser located a certain tract of land, cleared, fenced, and planted it in fruit trees, etc. He continued to so occupy it for about nine years, when he procured a survey to be made, which showed that the boundaries of the land as located extended over the land of adjacent owners. He then improved the land with reference to the new survey, and removed the improvements from the strip outside the boundaries. Two years later he placed a house on the strip. Upon the above state of facts the Supreme Court of Washington, in the case of Noyes v. Douglass, 81 Pac. Rep. 724, held that the claimant did not acquire by adverse possession of the strip outside the boundaries fixed by the survey, and that there was an abandonment of the strip outside of the boundaries fixed by the survey within the statutory period of ten years fixed for acquiring land by adverse possession. This is in pursuance of the decisions of the Washington court in the cases of Suksdorf v. Humphrey, 36 Wash. 1, 77 Pac. Rep. 1071, and Wilcox v. Smith (Wash.), 80 Pac. Rep. 803, where the rule is stated as follows: "If one by mistake inclose the land of another, and claim it as his own, his actual possession will work a disseisure; but if, ignorant of the boundary line, he makes a mistake in laying his fence, making no claim, however, to the lands up to the fence, but only to the true line as it may be subsequently ascertained, and it turns out that he has inclosed the lands of the adjoining proprietor, his possession of the land is not adverse."

This is, unquestionably, good sense. In the case of Murray v. Romine (Neb.), 82 N. W. Rep. 318, the court held that where defendant's grantor held possession of a piece of land several years without color of title, pasturing and partly fencing it, and then transferring it to defendant, who occupied it by pasturing cattle, cutting hay, and building additional fences, and such possession continued for more than ten years, that it constituted a right to title by adverse possession. The distinction between the above and the principal case is that in the principal case there was evidence of an abandonment, while there was an open, notorious, continuous, and adverse possession without interruption, with acts of ownership in the latter case. These cases seem often difficult to determine, and in the principal case the nisi prius judge's opinion was reversed. We presume he was influenced by the opinion of the Washington Supreme Court in the case of Flint v. Lang, 12 Wash. 342, 41 Pac. Rep. 49, where a purchaser of a city lot built a fence around three sides of it (the land being inaccessible from the fourth side on account of the roughness of the ground), cleared it of brush and timber, a considerable quantity of which was on it and the surrounding lots, and planted shrubbery thereon. It was held sufficient to constitute a good title, while in the case of Carroll v. Gillion, 33 Ga. 539, it was held that the possession of land was not sufficiently open and notorious to extend an inclosure on adjoining land over the line of another lot some 10 or 15 feet wide, and taking in such inclosure a strip of land of that width and running half across the lot under a claim

Digitized by Google

of title. Nor was it considered sufficient in the case of Royall v. Lisle, 15 Ga. 545, 60 Am. Dec. 712, where a cow pen was built on the boundary line separating two lots of land, and immediately contiguous to defendant's land, occasionally felling trees and permitting cattle to range over the uncultivated land. There is no end to the cases on this subject. We have cited some of those which encroach on the limits.

Evidence—Evidence of Handwriting—Testing Witness by Writings Only Partially Disclosed.

In an action upon a promissory note, after denying the genuineness of the maker's signature, a non-expert witness was shown documents, apparently already in evidence, so covered as to leave visible only the signatures, and was asked whether the latter were genuine. Held, that the witness is not entitled to see the entire document before expressing an opinion. Groff v. Groff, 209 Pa. St. 603.

A witness to handwriting, whether expert or not, may on cross-examination be tested by writings which are properly in evidence or are admitted by the parties or the witness to be genuine. Whether he may be questioned as to writings not already in evidence is in conflict. Where the handwriting of an instrument is disputed, it has been held not error to require an expert to be shown the entire document. West v. State, 22 N. J. Law, 212, 240. The opposite result has been reached in the case of expert or non-expert witnesses examined as to signatures. Browh v. Woodward, 75 Conn. 261; Hoag v. Wright, 174 N. Y. 36; contra, Insurance Co. v. Throop, 22 Mich. 146.

If the signature only is disputed and the witness' knowledge is not limited to the alleged author's signature on a particular class of documents, the practice employed in the principal case seems unobjectionable. Generally, the question should rest with the discretion of the trial judge. It should be noticed that the decision of the precise question under discussion should not vary whether or not the court is one of those which allow witnesses to be tested by documents extrinsic to the issue.—Harvard Law Review.

That the contents of an extrinsic document can not be incorporated into a will by a clause stating that a sum was given in trust, "for the purpose set forth in the sealed letter, which will be found with the will," is declared in Bryan's Appeal (Conn.), 68 L. R. A. 353, where the will contains no clear, explicit, and unambiguous reference to a specific document as the one intended. The other authorities on incorporation of extrinsic document into will are considered in a note to this case.

The enforcement of the penalty of forfeiture of interest, imposed by a will upon a legatee who attempts to contest the instrument, is denied in Re Friend (Pa.), 68 L. R. A. 447, where it clearly appears that the contest to have the will set aside was justified under the circumstances, and was not the mere vexatious act of a disappointed beneficiary. A note to this case reviews the other authorities on effect of provision in will that any beneficiary who contests the instrument shall forfeit his interest.

Defective Machinery—Negligence.

The Supreme Court of Minnesota held, in the case of Shalgren v. Red Cliff Lumber Company, that where an employee complained to his employer of a defective condition of machinery, and the employer promised to correct such defect and directed the employee to continue his work until the repairs could be made, and the employee, in reliance upon such promise, continued to work with the defective instrumentality without harm for a period of ten days, the danger was not so great nor the risk so imminent as to impose upon him as a matter of law the assumption of the risk involved. In this case it appeared that the plaintiff's hand was caught in the shavings pocket of a shavings baler and there crushed by its advancing packer bar. It was alleged that the loose roller over which the bar passed was worn off from its cylindrical form; that thereby a plate which passed over the bar as it advanced was made to jump up and catch the plaintiff's hand while down in the pocket to adjust the board used to evenly apply the impact of the bar against the shavings. There was a conflict of evidence as to whether or not such irregular motion could have been produced by the defective or loose roller, and the court held that this question, as well as one as to whether the plaintiff was guilty of contributory negligence, was properly presented to the jury.

To permit an administrator to bring an action in forma pauperis for the alleged negligent killing of his intestate, it is held, in Christian v. Atlantic & N. C. R. Co. (N. C.), 68 L. R. A. 418, that he need not show personal inability to give the required bond, or make the necessary deposit, but that it is sufficient if he shows such inability on behalf of the estate and those for whose benefit the suit is really brought. The other cases on the right of executor or administrator to sue, defend, or appeal in forma pauperis are considered in a note to this case.

A judgment against the principal on a promissory note is held, in Nelson v. Webster (Nebr.), 68 L. R. A. 513, not to be extinguished by its payment by the surety, who takes an assignment thereof to himself for the purpose of enforcing it against his principal, and the surety is held to be entitled to collect it by issue of execution against the principal. An extensive note to this case reviews all the other authorities on extinction of judgments against principal by sureties' payment.

The right to set aside a provision by which testator placed property intended for the benefit of his son in trust, and to turn the property over to the son, upon evidence that at the time the trust was established the son was partially paralyzed, and testator feared he would become mentally incapacitated, but that in fact he did not become so, and that his health had become so far restored that he was perfectly competent to manage his estate, is denied in Carpenter v. Sturgeon (Ky.), 68 L. R. A. 637.

Digitized by Google

One on trial for murder perpetrated in carrying out a conspiracy to rob is held, in People v. Lawrence (Cal.), 68 L. R. A. 193, to have no right to object to the use of the language, "even if he did not intend to take life, and regretted that it was done," in an instruction that he was guilty of murder if one of the party killed a person in carrying out the conspiracy. The other authorities on homicide in carrying out unlawful conspiracy are collated in a note to this case.

Failure of police officers having charge of the holder of an accident insurance policy to protect him from assaults by other persons is held, in Jarnagin v. Travelers' Protective Asso. (C. C. A. 6th C.), 68 L. R. A. 499, not to take his killing by them out of a provision in the policy that no recovery can be had upon it in case of death from intentional injuries inflicted by insured or any other person.

The right to the use of steam from the landlord's plant to heat water and warming tables is held, in Slack v. Knox (Ill.), 68 L. R. A. 606, not to pass to the lessee under a renewal lease which does not mention it, where the first lease was under seal, and the right claimed was acquired under an oral contract made for a separate consideration after the lease was executed.

The liability of a master for the negligence of his foreman in designating from among several competent employees a helper for another servant, merely because he was not as competent as one who might have been designated, and who was asked for to assist on the particular job, is denied in Hilton v. Fitchburg R. Co. (N. H.), 68 L. R. A. 428.

That equity will raise a trust by construction is declared in Stahl v. Stahl (Ill.), 68 L. R. A. 617, where a mother, ill in bed, at the solicitation of her children, conveys her property to one of them upon his agreeing to hold it for the benefit of all, to avoid the expense of distributing it through the courts, and he, without consideration, conveys it to another child with notice.

A remainderman is held, in Roby v. Newton (Ga.), 68 L. R. A. 601, to be entitled to the forfeiture of the life tenant's interest because of waste only when it appears that there has been both permissive and voluntary waste by the tenant, or one for whom he was responsible, and that the voluntary waste was committed wantonly.

Offering a worthless bill in satisfaction of an obligation, with a request for change, is held, in Com. v. Beckett (Ky.), 68 L. R. A. 638, to be within a statute providing for the punishment of anyone who, by false token, with intent to commit a fraud, obtains money or property, although it is not expressly stated that the bill is a good one.

An exception in favor of those who can show that no practicable device exists which will prevent the nuisance when applied to their buildings, is held, in State v. Tower (Mo.), 68 L. R. A. 402, not to render unconstitutional a statute making the emission of dense smoke into the air a penal offense.

The right of the courts to consider the adequacy of the provision for an unborn child to save a will from revocation by his birth is denied in Re Newlin (Pa.), 68 L. R. A. 464, if the provision for him shows that he was in fact in the testator's mind.

Authority to confess judgment contained in a power of attorney attached to a lease for any rent that may be due by the terms of the lease is held, in Weber v. Powers (Ill.), 68 L. R. A. 610, not to extend to rent accruing when the lessee is holding over after the expiration of the lease.

The drawing of a check for part of a fund on deposit, by one under the fear of impending death, and delivering it to the drawee with directions to forward it to the bank, accompanied by a statement that the amount is to become the property of the drawee in case of the drawer's death, is held, in re Collins (Wash.), 68 L. R. A. 119, to be a sufficient gift causa mortis to prevent an escheat to the State.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

TO LAWYERS.

You may learn by mail how to organize stock companies to exploit any kind of business or invention and finance them; how to sell their stock and bond issues; to raise capital for development purposes, and underwrite; guarantee same from loss of money invested therein, and act as registrar and transfer attorney thereof, for $25, including books. Address CORPORATION CORRESPONDENCE COLLEGE, NEW YORK CITY. 41-lt

Digitized by Google

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Bernard P. Mimmick, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Catalina Juliana Mason Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10 day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. CASSIE MASON MYERS JULIAN-JAMES, 1602 20th st. N. W. Attest: TAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,185. Administration. [Seal.] 41-3t

J. J. Waters, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Stanley Pearce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of October, 1905. GEORGE PIMPER, 3245 M st. N. W.; HENRY F. KUNKEL, 806 20th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,062. Administration. [Seal.] 41-3t

George F. Graham, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Columbus J. Eslin**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 8th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 9th day of October, 1905. BENJ. J. ESLIN, GEO. F. GRAHAM, by Geo. F. Graham, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,505. Administration. [Seal.] 41-3t

Saml. Maddox, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas Culhane**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of October, 1905. BRIDGET M. CULHANE, 921 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,199. Administration. [Seal.] 41-3t

Legal Notices.

Lyon & Lyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louise Lansburgh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. GUSTAVE LANAHAM, 1018 Vt. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,211. Administration. [Seal.] 41-3t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Adolf Cluss**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1905. LILLIAN C. DAW, 2301 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,179. Administration. [Seal.] 41-3t

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Irvin B. Wright**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,195. Administration. 41-3t

Mason N. Richardson, Solicitor

In the Supreme Court of the District of Columbia,
Ira T. Bryant et al. v. Jerome A. Johnson et al.
No. 24,729. Equity Docket No.—

The object of this suit is to subject lot 36, sq. 194, in the District of Columbia, to the claim of complainants as judgment creditors, and to divest defendants of all title and interest thereof. A copy of this order to be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to the return day hereto. On motion of the complainant, it is this 10th day of October, A. D. 1905, ordered that the defendant, **Robert H. Bundy**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise [Seal] the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 41-3t

Barnard & Johnson, Attorneys,

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Brison Norris**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. MARY E. NORRIS, 501 H. st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 41-3t

Digitized by Google

Legal Notices.

Albert E. Shoemaker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Richard Edwards, Deceased.
No. 13,213. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said deceased, by Susan Edwards, it is ordered, this 12th day of October, A. D. 1905, that notice be and hereby is given to **Sarah Wilkins, Alice Minor, and Garrit S. Edwards,** and to all others concerned, to appear in said court on **Wednesday, the 15th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 41-3t

E. H. Thomas.

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 48 and 52 Q street northeast, in the county of Washington, District of Columbia, being lots numbered one hundred and five (105) and one hundred and seven (107) in Francis A. Blundon's subdivision of lots in square numbered three, "West Eckington," as per plat recorded in liber county No. 11, folio 29, of the records of the office of the surveyor of the District of Columbia, to Charles L. Selecman for the sum of seventy-five hundred ($7,500) dollars cash, less three (3%) per cent brokerage commission, it is by the court, this 6th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **6th day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. [Seal] Attest: James Tanner, Register of Wills. 41-3t

SECOND INSERTION.

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold premises No. 909 H street northeast, Washington, D. C., being lot twenty (20) in Moses Kelley's subdivision of square nine hundred and thirty-four (934), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in book W. B. M., page 353, to Paul Leverone for thirty-seven hundred and fifty ($3,750) dollars cash, less three (3) per cent brokerage commission, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **3d day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. [Seal] Attest: James Tanner, Register of Wills. 40-3t

Francis H. Stephen, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George T. Morgan,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. JAMES A. KEMP, Police Headquarters. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,200. Administration. [Seal.] 40-3t

Legal Notices.

Barnard & Johnson and George Francis Williams, Solicitors for Complainant

In the Supreme Court of the District of Columbia. Ernest L. Schmidt, Complainant, v. Ada G. Earhart Ross et al., Defendants. No. 25,522, Equity Doc. 57.

The object of this suit is to sell certain property in the city of Washington, in the District of Columbia, described as follows, and being, to wit: The lots 17, 18, 20, and 21, in Butler's subdivision of lots in square 226, also original lot 1 in square 252, together with the improvements thereon, and to distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and also to substitute a trustee pending any such sale. On motion of the complainant, by his solicitors, Barnard & Johnson and George Francis Williams, it is, by the court, this 3d day of October, A. D. 1905, ordered that the defendants, **Ada G. Earhart Ross, Jessie Elizabeth Earhart McGuire, Virginia Butler Earhart Ferguson, Carter Earhart, and Lyttleton Reese,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 40-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hannah Lavinia Bartlett, Deceased.
No. 13,193. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William Holabird and Joseph Willard Preston, as executors, it is ordered this 4th day of October, A. D. 1905, that notice be and hereby is given to **Agnes Theodosia von Konowsky, Mary Edna Preston, Julia Starr Preston, Joseph Willard Preston, Jr., and Henry Grant Preston,** and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George H. Denney,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. FANNIE E. CARTER, Nichols ave., Anacostia, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No 13,173. Administration. [Seal.] 40-3t

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Gustavo L. Roxer, Jr.,** late of Austria, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of August, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. F. WALTER BRANDENBURG, Fendall Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,133. Administration. [Seal.] 40-3t

Digitized by Google

Legal Notices.

Robt. E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Helen Rowland**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. ROBERT E. MATTINGLY, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,167. Administration. [Seal.] 40-3t

A. Coulter Wells, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Buchanan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1905. MARY WEAVER, 1518 Que st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,154. Administration. [Seal.] 40-3t

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Evalyn Doughty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. CAVOUR O. BOHRER, 113 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,906. Administration. [Seal.] 40-3t

P. J. Ryan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert Georgii, Deceased.
No. 13,162. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ignatius Nau, it is ordered this 2d day of October, A. D. 1905, that notice be and hereby is given to **Max Georgii and Herrmann Georgii**, and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

George Francis Williams, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Maria W. Richards**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1905. CHARLES H. RICHARDS, 35 Hillside ave., Montclair, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,089. Administration. [Seal.] 40-3t

Legal Notices.

M. A. Mess, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ottilie Aumann, Deceased.
No. 13,169. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frank A. B. Wünnenberg, it is ordered this second day of October, A. D. 1905, that notice be and hereby is given to **Christian Aumann** (a brother), **Ottilie Aumann** (a niece), and **Walburga Aumann** (a stepsister), and to all others concerned, to appear in said court on **Friday, the 10th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and New Yorker Staatszeitung once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. [Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t

Sheehy & Sheehy, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Murphy, Deceased.
No. 8356. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, by Catherine J. Murphy, it is ordered this 3d day of October, A. D. 1905, that notice be and hereby is given to **John Murphy, Edward Murphy, and Thomas Murphy**, and to all others concerned, to appear in said court on **Wednesday, the 8th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t

F. P. Sheehy, Attorney
In the Supreme Court of the District of Columbia,
Holding a Special Term as a Probate Court.
In re Estate of Michael Burke, Deceased.
Administration, No. 11,704.

Upon consideration of the report herein filed by Charles J. Springmann, executor of the last will and testament of Michael Burke, deceased, showing that he has sold at public auction to John W. Weitzel for twenty-five hundred ($2,500) dollars cash the real estate mentioned and described in the proceedings had in the above entitled matter, namely, lot numbered fourteen (14) in square numbered five hundred (500), improved by premises No. 495 L street southwest, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **4th day of November, 1905.** Provided this order be published once a week for three successive weeks in the Washington Law Reporter before said last mentioned date. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 40-3t

THIRD INSERTION.

Millan & Smith, Solicitors
In the Supreme Court of the District of Columbia.
Frank Waters et al., Complainants, v. Lavinia Waters et al., Defendants. Equity No. 25,667. Docket 57.

Upon consideration of the report of W. W. Millan, trustee, herein filed, showing that he has sold the south forty-five (45) feet of original lot seventeen (17) in square eight hundred and fifty-nine (859) in the city of Washington, District of Columbia, to Charles Specht, for four thousand five hundred dollars ($4,500), it is, this 28th day of September, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of October, A. D. 1905.** Provided copy of this order be published once in each of three successive weeks before said day in The Washington Law Reporter. [Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

Digitized by Google

Legal Notices

O. B. Glason, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maine, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen J. Thompson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1905. HOSEA H. CARY, East Pittston, Me. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,186. Admn. [Seal.] 39-3t

John B. Larner, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,293.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law [Seal] Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.
sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Justice blanks of every description for sale at this office.

Legal Notices.

McKenney & Flannery, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Caroline A. Baker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. NATHAN C. TWINING, Bureau of Ordnance, Navy Dept. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,079. Administration. [Seal.] 39-3t

Michael J. Keane, Solicitor
In the Supreme Court of the District of Columbia,
Holding Equity Court.
Mary C. Deery, Complainant, v. John T. Neumeyer et al., Defendants.
In Equity, No. 25,617.

Michael J. Keane, the trustee in the above entitled cause, having reported a sale at public auction of part of lot ten (10), in square five hundred and twelve (512), as more fully described in the bill of complaint filed herein, to R. Harrison Johnson, for the sum of two thousand two hundred and fifty ($2,250) dollars, it is this 22d day of September, 1905, ordered that the said sale be confirmed, unless cause to the contrary be shown on or before the **22d day of October, 1905**; provided a copy of this order be published once a week for three successive weeks in The Washington Law Re- [Seal] porter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-3t

L. Cabell Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Wilson Gregory**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of September, 1905. FRANCES G. GREGORY, 2510 M st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,948. Administration. [Seal.] 39-3t

Chas. L. Frailey, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Andrew Wylie**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. HORACE WYLIE, 1205 Vermont ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,174. Admn. [Seal.] 39-3t

Robert E. Mattingly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Margaret C. Mooney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of September, 1905. BETTIE LE PREUX, 1501 9th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,127. Administration. [Seal.] 39-3t

Digitized by Google

Legal Notices.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia.

Holding an Equity Court.

Terrence J. McMahon v. the Unknown Heirs, Alienees, or Devisees of Charles Carter, Deceased.

Equity No. 25,554.

The object of this suit is to perfect the title of the complainant to lot numbered thirty-seven (37) in John M. Graham's subdivision of lots in square numbered two hundred and fifty-two (252) in the city of Washington, District of Columbia, as said subdivision is recorded in Liber H. D. C., at folio 184½, in the surveyor's office of the District of Columbia. Upon motion of the complainant, by his solicitor, it is, this 27th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Charles Carter, deceased, cause their appearance to be entered herein on or before the first rule day of November, 1905; otherwise the cause will be proceeded with as in case of default. This order shall be published once a week for four (4) successive weeks in The Washington Law Reporter before said return date, it appearing to the court, upon good cause shown, based upon the bill and affidavit filed herein, that further publication is unnecessary. HARRY M. CLABAUGH, Chief Justice. [Seal] True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-4t

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Mary E. Letts, Deceased.

No. 13,143. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, it is ordered this 27th day of September, A. D. 1905, that notice be and hereby is given to **the unknown heirs and next of kin of said Mary E. Letts, deceased,** and to all others concerned, to appear in said court on **Monday, the 30th day of October, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. [Seal] Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 39-3t

Philip Walker, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Minnesota, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adelaide M. Shedd,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. FREDERICK G. STUTZ, 48 W. 3d st., St. Paul, Minn. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,151. Administration. [Seal.] 39-3t

W. C. Martin, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Reuben Taylor,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1905. W. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,751. Administration. [Seal.] 39-3t

Legal Notices.

FOURTH INSERTION.

[Filed September 18, 1905.]

A. Leftwich Sinclair, Attorney for the District of Columbia

In the Supreme Court of the District of Columbia,

Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at **2 o'clock p. m. on the 31st day of October, A. D. 1905,** at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 3 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. [Seal] A true copy. Test: J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 38-6t

SIXTH INSERTION.

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.

Gilbert J. Osterman et al. v. Robert E. Poole et al.

No. 25,518. Equity.

The object of this suit is to perfect complainants' title to subloits 108 to 114, inclusive, square 104, Washington, D. C. On motion of the complainants, it is, this 10th day of August, A. D. 1905, ordered that the defendants, **Robert E. Poole, Susan Erwin, and Ann Council,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, **the unknown heirs, devisees, and alienees of Martin Casner, of Martin Kershnor, of Margaret Freeman, of Charles W. Goldsborough, and of Charles Henry Goldsborough,** cause their appearance to be entered herein on or before the rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the month following the first publication of this order, and twice a month for the two succeeding months, in The Washington Law Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clk. au 11,18,25; sept. 8,22; oct. 13,27

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 42

Published by

THE LAW REPORTER COMPANY OF WASHINGTON CITY

Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - OCTOBER 20, 1905

CONTENTS.

Editorial 657
COURT OF APPEALS OF NEW YORK:
Edmund Wright, respondent, v. Edward Hart, appellant 658
Notes of Interest 663
Legal Notices 666

DECISIONS BY THE COURT OF APPEALS.

Perjury; False Statement in Application for Civil Service Examination.

In Johnson v. United States, the appellant was convicted of perjury alleged to have consisted in making a false statement in an application to the Civil Service Commission for examination and appointment in the postal service. It appeared that Johnson had been employed in the Postoffice Department and had been discharged; but in his application he stated that he had never been separated from the Government service. The question involved was whether the oath administered to Johnson was authorized by any law of the United States. The Court of Appeals holds, in an opinion by Mr. Chief Justice Shepard, that the law requiring applicants for examination to state under oath their legal residence included other statements required by the civil service regulations. The judgment of the trial court is therefore affirmed.

Police Regulations—Firing Revolver Within City Limits.

In District of Columbia v. Lewis, a judgment of the Police Court of the District was reversed. The defendant in error, a police officer, was charged with having, while off duty, fired his revolver within the city limits without a permit from the Superintendent of Police and in violation of the police regulations. The Police Court sustained a motion to quash the information on the ground that the regulation on which it was based was void, as being an unreasonable and illegal delegation of power. The Court of Appeals, however, in an opinion by Mr. Chief Justice Shepard, upholds the validity of the regulation, and remands the case to the Police Court for trial.

MR. E. RICHARD SHIPP, for some years a well-known member of the bar of this District, has removed to Douglas, Wyo., where he will engage in the practice of his profession. Mr. Shipp is a lawyer of ability, and has achieved success as a teacher of law, having been identified with several of our best law schools. He has many friends in this District, who while they regret his removal from our midst, wish him abundant success in his new field, and are confident he will have it.

Constitutionality of Act Regulating Sales of Merchandise in Bulk.

We report in this issue an important and interesting decision of the Court of Appeals of New York, in the case of Wright v. Hart, in which the so-called vendor and vendee law of that State is declared unconstitutional. This law provides that in case of the sale of any part or the whole of a stock of merchandise, made otherwise than in the regular course of trade, the seller must, at least five days before it occurs, give notice to his creditors of the proposed sale. The case before the court was one in which the vendor sold his stock of clothing, store fixtures, and lease without, as was alleged, complying with the provisions of the law. The plaintiff, as trustee in bankruptcy, brought suit to recover the stock and the money value of the part which had been disposed of. On behalf of the defendant it was contended that the law was unconstitutional as violating both the Federal and State constitutions by interfering with the right of contract; that it interfered with the right of a man to acquire property as he chose, and that it discriminated between classes, in that it was confined in its operation to those engaged in mercantile pursuits and did not affect bankers, farmers, or other classes of people. The court declared against the validity of the law, but only by a close margin, the vote being four to three. The dissenting opinions will be reported in our next issue.

A similar statute for this District, enacted by Congress on April 28, 1904, has been the subject of much discussion by the members of the bar, and this decision of the Court of Appeals of New York will be read with interest. We are indebted to the courtesy of the New York Law Journal for the privilege of laying it before our readers.

Digitized by Google

Court of Appeals of New York.

EDMUND WRIGHT, AS TRUSTEE IN BANKRUPTCY OF W. C. LOFTUS & CO., BANKRUPT, RESPONDENT,

v.

EDWARD HART, APPELLANT.

CONSTITUTIONAL LAW—SALES OF MERCHANDISE IN BULK—CHAPTER 528, LAWS OF 1902, HELD INVALID.

Chapter 528 of the Laws of 1902, which declares fraudulent and void as against creditors the sale of an entire stock of merchandise in bulk unless the various provisions of the statute are complied with, is unconstitutional because—

1. It deprives the vendor and the vendee of liberty and property without due process of law, by interfering with their power to contract; and
2. It deprives them of the equal protection of the laws, in that the provisions of the act are aimed at merchants only, and do not affect any other class of the community.

Decided October 3, 1905.

APPEAL from an order of the Appellate Division, First Department, affirming an interlocutory judgment of the special term overruling a demurrer to the complaint.

In November, 1903, a corporation, known as W. C. Loftus & Co., engaged in the retail clothing and tailoring business in the city of New York, sold to the defendant its entire stock, fixtures, and lease for a consideration of $22,953.86. Within a few days thereafter a petition in involuntary bankruptcy proceedings was filed against it, and the plaintiff was elected trustee thereunder. At the time of the sale referred to chapter 528 of the laws of 1902 was in force, and it provided that: "Section 1. A sale of any portion of a stock of merchandise other than in the ordinary course of trade in the regular and usual prosecution of the seller's business, or the sale of an entire stock of merchandise in bulk, shall be fraudulent and void as against the creditors of the seller, unless the seller and purchaser shall at least five days before the sale make a full and detailed inventory showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost price to the seller of each article to be included in the sale, and unless such purchaser shall at least five days before the sale, in good faith, make full explicit inquiry of the seller as to the name and place of residence or place of business of each and every creditor of the seller and the amount owing each creditor, and unless the purchaser shall at least five days before the sale in good faith notify or cause to be notified personally or by registered mail each of the seller's creditors of whom the purchaser has knowledge, or can with the exercise of reasonable diligence acquire knowledge of such proposed sale and of the stated cost price of merchandise to be sold, and of the price proposed to be paid therefor by the purchaser. The seller shall at least five days before such sales file a truthful answer in writing of each and all of said inquiries."

The plaintiff, as trustee in bankruptcy of the selling corporation, has brought this action to set aside the sale on the ground that it was made without complying with any of the provisions of the statute. The purchasing defendant interposes the demurrer that the complaint does not state facts sufficient to constitute a cause of action because the statute is unconstitutional. This claim of unconstitutionality is based (1) upon article 1, section 1, of our State constitution, which provides that "no member of this State shall be . . . deprived of any rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers;" (2) upon article 1, section 6, of our State constitution, which provides that no person shall "be deprived of life, liberty, or property without due process of law," and (3) upon article 1 of the fourteenth amendment to the Federal Constitution, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Mr. Louis Marshall for appellant.

Mr. Abram I. Elkus for respondent.

WERNER, J.—Before proceeding to a critical view of the challenged statute it may be profitable to make a few pertinent though trite observations on the nature, construction, and effect of written constitutions. A written constitution is the fundamental expression of the sovereign will. Under our form of government that sovereign will resides in the people. A written constitution is not only the direct and basic expression of the sovereign will, but is the absolute rule of action and decision for all departments and offices of government in respect to all matters covered by it, and must control as it is written until it shall be changed by the authority that established it. It is true, as was said by Judge Cooley, that "the weaknesses of a written constitution are that it establishes iron rules which, when found inconvenient, are difficult of change; that it is often construed on technical principles of verbal criticism rather than in the light of great principles, and that it is likely to invade the domain of ordinary legislation instead of being restricted to fundamental rules." The logical corollary of the proposition that the constitution is the supreme law of the land is that the power to legislate is a purely delegated one, derived from the constitution and controlled by it. In the case at bar we are concerned with no squibbles of verbiage or technicalities of construction, but with the broad question whether an act of our legislature is repugnant to the "iron rule" of our Federal and State constitutions that no citizen shall be deprived of "life, liberty, or property," or be denied the "equal protection of the laws."

In the course of judicial interpretation, the words "liberty" and "property" as used in the constitutions, have naturally and properly been given their most comprehensive signification, so that they embrace every form and phase of individual right that is not necessarily taken away by some valid law for the general good. "The term 'liberty,' as protected by the constitution, is not cramped into a mere freedom from physical restraint of the person of the citizen, as by incarceration, but it is deemed to embrace the right of man to be free in the

Digitized by Google

enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare" (People, &c., v. Marx, 99 N. Y. 377). "All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession or confine him to work or live in a specified locality or exclude him from his own house, or restrain his otherwise lawful movements (except as such laws may be passed in the exercise by the legislature of the police power), are infringments upon his fundamental rights of liberty, which are under constitutional protection" (In re Jacobs, 98 N. Y. 98). "'Liberty' . . . includes the right to acquire property, and that means and includes the right to make and enforce contracts" (State v. Loomis, 115 Mo. 307; Allgeyer v. Louisiana, 165 U. S. 578). The right to use, buy, and sell property is protected by the constitution, and "when the law annihiliates the value of property and strips it of its attributes by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation and certainly within the constitutional provision intended expressly to shield personal rights from the exercise of arbitrary power" (Wynehamer v. People, &c., 13 N. Y. 378, 398; People ex rel. Mark. S. Instn. v. Otis, 90 N. Y. 48).

Let us now analyze the statute under scrutiny. Every sale (a) "of any portion of a stock of merchandise, other than in the ordinary course of trade in the regular and usual prosecution of the seller's business, or (b) the sale of an entire stock of merchandise in bulk, shall be fraudulent and void as against the creditors of the seller, unless (1) the seller and purchaser shall, at least five days before the sale, (2) make a full and detailed inventory (3) showing the quantity, and, so far as possible with the exercise of reasonable diligence, (4) the cost price to the seller of each article to be included in the sale, and unless (5) such purchaser shall, at least five days before the sale, in good faith, make full, explicit inquiry of the seller as to the (6) name and place of residence or place of business of each and every creditor of the seller, and (7) the amount owing each creditor, and unless (8) the purchaser shall, at least five days before the sale, in good faith, (9) notify or cause to be notified personally or by registered mail each of the seller's creditors of whom the purchaser has knowledge, or can with the exercise of reasonable diligence acquire knowledge, of such proposed sale, and (10) of the stated cost price of merchandise to be sold, and (11) of the price to be paid therefor by the purchaser. (12) The seller shall, at least five days before such sale, file a truthful answer in writing of each and all of said inquiries."

No one will have the temerity to suggest that this drastic and cumbersome statute is not in restraint of the rights of "liberty" and "property," as those terms have been judicially declared to have been used in the Federal and State constitutions. It is contended, however, that the restraint which it imposes upon these rights is justifiable under that shibboleth of legislatures and courts known as the police power. Far be it from us to deny the existence of that power or to attempt to define its extent. It will be our effort, rather, to show that the statute under consideration is, in some particulars, so thoroughly unrelated to the probable object of its enactment, and in others so cumbersome, burdensome, unreasonable, and unworkable, as to violate every one of the constitutional provisions under which it is challenged. The rights of "liberty" and "property," as we have seen, are sacred and substantial rights guaranteed by the Federal and State constitutions. Any law that interferes with the right to make and enforce contracts affects both the liberty and property of the citizen. The right to sell and purchase merchandise in bulk is no less under the protection of the constitution than the right to sell and buy in the smallest possible quantities. Any legislative interference with either of these rights, that is clearly forbidden as to the other, can only be justified on the ground of public necessity, which is but another way of saying that it is for the general welfare. Such interference should not only be based upon public necessity, but it should be conservative, reasonable, and well adapted to the end sought to be attained. Until the 11th day of April, 1902, it was just as lawful in this State to sell any portion of a stock of merchandise, or the whole of such stock in bulk, as to sell the same goods piece by piece at retail. By the statute which went into operation on that day the sale of any stock of merchandise in bulk, or of any considerable portion thereof, was made unlawful as against the creditors of the seller, unless both seller and purchaser should do many things that were clearly and substantially restrictive of the right of contract as it had theretofore been enjoyed in respect of such property. This criticism of the statute is sought to be answered by the plea that the law was designed to correct a great public evil; that it was aimed at a class of merchants who have engaged in the fraudulent practice of obtaining merchandise on credit for the purpose of making hasty and secret sales thereof in bulk and then decamping with, or otherwise disposing of, the proceeds at the expense of their creditors. It may be conceded that this was the ostensible purpose of the statute, and that the evil complained of was one of substantial reality and magnitude, for which an efficacious remedy was much to be desired. But that does not meet the argument against the constitutionality of the statute. The question still remains whether the legislature has not overstepped the limits of its power by practically placing an embargo upon all sales of merchandise in bulk, under the guise of a statute ostensibly designed to prevent frauds in such sales. Beginning with the title of the statute, we observe that its object is "to regulate the sale of merchandise in bulk." If we give to the term "merchandise" its ordinary business signification there is no escape from the conclusion that the statute applies to merchants alone as distinguished from manufacturers, farmers, bankers, the members of the several professions, mechanics, etc. Under this construction of the law the merchant is prohibited from doing that which is permitted to all other men. Merchants comprise a comparatively small number of the community at large and, therefore, this would seem to be class legisla-

Digitized by Google

tion which denies to those affected by it the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution. If the term "merchandise" is given a somewhat more liberal interpretation, so as to include finished manufactured products, the stocks of jobbers and wholesale merchants, the statute is still open to the criticism that it denies the equal protection of the laws to all citizens, becauses it imposes upon certain classes, such as manufacturers, jobbers, and wholesale merchants, burdens that are destructive of their legitimate business. It is common knowledge that in this age of large enterprises many merchants purchase the whole products of mills and factories. In the case of the jobber or the wholesale merchant these products are again sold in bulk, or in large but varying quantities. If the manufacturer, jobber, or wholesale merchant sell their entire stocks in bulk, the statute applies without regard to the question whether the sale is according to long-established custom, or in the regular course of trade. If there is a sale in bulk of less than the whole, then the validity of the sale is made dependent to some extent upon the question whether it is in the ordinary course of trade in the regular and usual prosecution of the seller's business. What is the ordinary course of trade in the regular and usual prosecution of such a seller's business? The manufacturer may dispose of his entire output to a single purchaser during a single year, or a series of years. Again, he may dispose of it in parcels to several purchasers. And yet again he may be compelled to rely upon a general market with purchasers from different quarters in varying quantities. On the 1st of January of a given year he may know to a certainty just how much he will produce and just where it will go. At the beginning of the next year he may not know what the morrow will bring forth. This is as true of the jobber and the wholesale merchant as of the manufacturer. And what is the net result? In the years when there is a single sale of the whole output, the statute applies without regard to the ordinary course of trade or the regular and usual prosecution of the seller's business. In other years when the sales, although in bulk, are in smaller quantities, the application of the statute depends, not upon the honesty of the transaction, but upon the shadowy question whether it is in the ordinary course of trade in the regular and usual conduct of the seller's business. And all this is as applicable to the purchaser as to the seller, although the former may have not the remotest knowledge of the manner in which the business of the latter is carried on. There are other and more serious constitutional objections to this statute in so far as it may affect the manufacturer, the jobber, and the wholesale merchant, but as these objections militate against the statute in its relation to all classes of men, we shall consider them in their general bearing upon the "liberty" and "property" clauses of the two constitutions.

The statute, as we have seen, discriminates between the sales of entire stocks in bulk and sales of portions of such stocks. But it does not differentiate between sales that are honestly made and sales that are made with intent to defraud. The sale of an entire stock is declared to be fraudulent and void as against the seller's creditors, no matter how solvent he may be, unless all the petty and harassing details of the statute are observed. The sale of a lesser quantity, however, is interdicted by no such sweeping fiat so long as it is made in the ordinary course of trade in the regular and usual conduct of the seller's business, although made with a fraudulent intent. But this is not all. Both seller and purchaser shall, at least five days before the sale, make a full and detailed inventory. One inventory is not enough. There must be two, or at least one joined in by both. And they must be made, not when the sale has been consummated, but five days before. Could anything be devised that would more effectually paralyze sales of merchandise in bulk? Some simple illustrations will clearly outline the pernicious possibilities of this unique provision. A is the owner of a stock of goods which he is willing to sell, and which B is ready to purchase at a price agreed upon. Each may think he is making a good bargain. A is anxious to sell at once so that he may use the proceeds in making another purchase of advantage. B wants to close the sale at once because he has an immediate and profitable market for the goods. If either has to wait five days or longer, and particularly for the purpose of making an inventory involving great labor and expense, he may prefer to drop the whole matter. Suppose, however, that the work of taking an inventory is commenced, and during its progress the market price rises or falls, or that either the seller or the purchaser discovers that he has made a poor bargain because the inventory discloses a greater or less value than was in the minds of the parties when the price was fixed. In such a case either the party may refuse to go on with the inventory or to file it if it is finished, and the result is that the person who may feel aggrieved has no remedy, because the statute imposes no penalty for failure to complete or file an inventory, and there can be no valid sale until both of these things are done. And what must such an inventory contain? First, the quantity. That is usually and of itself entirely sufficient in the case of a sale in bulk. Second, the cost price to the seller of each article to be included in the sale, although the purchaser, one of the parties who must file an inventory, may have no means of knowing anything about the cost price to the seller. It is true that the latter feature of the inventory is only made necessary in so far as it is possible with the exercise of reasonable diligence. But the seller may have full knowledge on the subject, which he may decide not to disclose. The purchaser may know nothing about it, but his bargain can be annihilated by the seller's refusal to exercise the "due diligence" by which the information could be disclosed. Then, again, a purchaser may have a market for goods which he is willing to purchase at a specified price. This market he would lose if compelled to file a long and detailed inventory containing the cost price to the seller. And the inventory must be filed. While the statute does not designate the place of filing, it would be of no value unless in some place where the inventory would become public property. Such an inventory,

Digitized by Google

moreover, is not only unnecessarily burdensome, but practically prohibitory of such sales. Not only the quantity of the goods sold, but the cost price of each article must be given in detail. This requires a disclosure of the very secrets that make sales in bulk a business possibility, and entails upon the prospective contractors many details that in a given case may require weeks or months, and that neither may care to go into. In the case of a sale of the whole or any part of the stock of a great department store, for instance, the cost price to the seller of every paper of pins or fine-tooth comb would have to be inventoried, although the producing cause of the sale might be based upon considerations that would utterly fail if such infinitesimal matters had to be taken into account.

The next requirement of the statute has to do with the purchaser alone. At least five days before the sale he must make full, explicit inquiry of the seller as to the name and place of residence or business of each of the seller's creditors, and of the amount owing to him, and, having done this, he must then notify or cause to be notified each of such creditors, personally or by registered letter, of the proposed sale and the stated cost price of the merchandise, as well as the price to be paid by the purchaser. In other words, the purchaser, who is under no legal or moral obligation to the seller's creditors, is not only required to obtain from the seller all these details concerning his creditors, but he must send to each one, no matter how great their number or how remote their places of residence or business, all the detailed information that is to be included in the inventory. Thus the inventory may have to be duplicated by the hundreds or thousands and sent to creditors scattered over all portions of the globe. It is true that this obligation rests upon the purchaser only to the extent that it can be fulfilled in the exercise of reasonable diligence, but this qualification emphasizes rather than mitigates the senseless and arbitrary command of the statute. And, finally, the seller shall, at least five days before such sale, file a truthful answer in writing to each and all of said inquiries. There is no intimation as to the place of filing, or as to what will happen if there is no filing. Neither are we informed as to the effect upon the purchaser of the seller's failure to tell the truth or to file his written answers. In the midst of such a mass of detail it is refreshing to feel that this trifle is left to the imagination.

Let us again emphasize the assertion that we do not question the power of the legislature to enact reasonable laws for the prevention of fraud and the protection of creditors. That this right falls within the general scope of the police power no one will deny. But the police power only begins where the Constitution ends. Broad and comprehensive as the police power concededly is, and incapable of precise definition or exact demarkation as we know it to be, it is never difficult to determine that its limits have been transcended when it is clear that the sacred domain of the Constitution has been trespassed upon. And when the exercise of the police power clearly infringes upon vested Constitutional rights, courts should not concern themselves with the probable purposes for which it is exercised, or the evils which it was designed to correct. First the constitution and then the police power. The statute under consideration sweeps away the Constitutional rights of liberty and property of a limited class of our citizens who are entitled to the equal protection of the laws with all other citizens. It invades the right of liberty because it arbitrarily and unnecessarily denies the right of a specified class of citizens to contract for bargain and sell a particular kind of property. It violates the constitution in prohibiting all sales of merchandise in bulk, whether honest or dishonest, except upon conditions that are harsh, drastic, unreasonable, and unnecessary in so far as they do not tend to effectuate the objects for which such a statute may properly be enacted. It ignores the constitutional guaranty relating to property rights, because it so restricts the right of contract as to deprive property of its characteristics as such.

It is urged, however, that the impositions of this statute are more nominal than real since a seller has only to pay his debts in order to make his sale valid. The argument, so far from supporting the statute, really serves to disclose one of its most sweeping and unreasonable features. If the statute affected none but insolvent sellers, or related merely to debts due, or gave to purchase price creditors an equitable lien for their respective shares of the proceeds of a proposed sale, or if instead of interdicting in advance a sale in bulk, it had made some reasonable provision for impounding the proceeds of sale until the seller's legal obligations could be judicially ascertained, there might be some force in the suggestion. But what is the fact? The act embraces all sales of entire stocks of merchandise in bulk. It covers every sale of any part of a stock not made in the ordinary course of trade in the regular and usual prosecution of the seller's business. It requires notice to be given to all the seller's creditors, whether their debts are due or not, that a sale is contemplated. It requires this notice to be given five days in advance of a sale. It requires observance of every one of its details or payment of every creditor. What is the practical effect? A seller who is abundantly able to pay his debts is compelled by law to do so before he can dispose of a part of his possessions. He must pay his debts whether they are due or not. He must pay them whether they are in dispute or not. He must pay creditors who have no legal, equitable, or moral claim upon the particular property or its proceeds. And if he depends upon the proceeds of the particular sale to pay his debts, he must pay them at least five days before he gets the money. Thus an intending seller is under the necessity of practically obtaining the consent of his creditors before he can make a sale. He must pay a claim that may be in dispute, right or wrong, and he must take what equitably belongs to the creditor for purchase price and pay it to general creditors, or he can be "held up." This may not be a literal taking of property without due process of law, but it is an annihilation of its value, and a destruction of its attributes, so that while the owner is permitted to retain his property in name he is deprived of its

Digitized by Google

essence and substance. Wynehamer v. People, etc., supra.

It is said that similar statutes, some of them much more drastic, have been adopted in twenty different States or jurisdictions. Twenty wrongs can never make one right. There is, moreover, a singular, not to say suspicious, coincidence in the time and substance of all this legislation. We are indebted to our brother Bartlett for the suggestion that more than half of these statutes were enacted in 1903 and 1904, and nearly all of them since 1900. Statutes that are passed pro bono publico rarely sweep the country with such irresistible momentum, while much fantastic legislation has resulted from organized crusades upon legislatures by the advocates and supporters of special classes. This statute "is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the fair, free, and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and, therefore, flying to the legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors." Peckham, J., in People, etc., v. Gilson, 109 N. Y. 389.

If we have succeeded in making our position plain it will be unnecessary to answer in detail that portion of Judge Vann's very learned and able opinion in which he illustrates the manifold purposes for which the police power has been exercised by legislatures and upheld by courts. The existence of the power is not denied. Its limits can not be accurately demarked. The well-beaten paths which it has pursued time out of mind contain no guide board to the new and untrodden field sought to be explored by this particular phase of paternal legislation. Therefore, old cases and old laws are of little help except as they expound general principles applicable to special conditions. In its final analysis the question is one of power in this particular case. We think that power has been transcended. "To justify the State in interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference, and second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations" (Colon v. Lisk, 153 N. Y. 188; Lawton v. Steele, 152 U. S. 133, 137). It can not be reiterated too often that the police power must be exercised within its proper sphere, and by appropriate methods. Whenever a statute arbitrarily strikes down private rights, invades personal freedom, or confiscates or destroys private property, it is repugnant to the constitution and should not be permitted to stand, no matter how laudable its purpose or beneficial its effect.

Owing to the length of this opinion we refrain from discussing the cases decided in other States upon similar statutes except to say that those which have been upheld in Massachusetts, Connecticut, Tennessee, and Washington are far less drastic than our own, in that they either except from their operation all sales by executors, administrators, receivers, etc., or provide that sales of merchandise in bulk shall only be presumptively void if the statutory requirements are not observed; or, as in Connecticut, that one day after the sale there shall be filed a descriptive writing duly signed and acknowledged. In Ohio and Utah, where such legislation was condemned by the courts, it was in some respects even more far-reaching and burdensome than here.

The judgment of the special term and appellate division should be reversed and judgment ordered sustaining defendant's demurrer, with costs in all the courts. Questions certified answered in the negative.

Haight, J.—I concur in the opinion of Werner, J. He has called attention to the defects in the statute in not specifying the place where the inquiries shall be filed. But in addition thereto the notice to creditors provided for means non-resident as well as resident creditors. The notice to creditors must be served either personally or by registered mail at least five days before the sale. The notice would be of no benefit unless it was received before the sale was completed and in time for the creditor to take action in reference thereto. The statute has, therefore, fixed the period of five days. If the notice s served personally it must be five days before sale. If by registered mail, the statute doubtless means the same thing; that is, the notice should be received at least five days before the sale. In other words, if the service is by registered mail, the posting must take place a sufficient time in advance so that the creditor may receive it at least five days before the sale is completed. Steinhard v. Bingham, 182 N. Y.—. In case of creditors so far removed as to be beyond the reach of the registered mail, personal service only would answer the requirements of the statute. Such a notice in many cases might be impossible, or if it could be given, it might involve not only so much time but so much expense as to render the purchase profitless and operate to defeat the sale. In case the sale is very large, as for instance, that of a large department store, weeks must elapse after the parties have made their agreement before they can complete the same. An inventory of every article must be made and the cost price of each article must be stated. This necessarily would consume considerable time. The inventory, no matter how extensive or bulky, must be duplicated for each creditor, for the statute could only be complied with by the serving of a copy of such inventory upon each creditor, containing the cost price of each article and the amount to be paid under the proposed agreement of purchase. This must be served personally or by registered mail five days before the sale. Again, what is the necessity of such a notice? It can have but one purpose. It gives to every creditor an inventory of every article proposed to be sold, the cost price thereof and the amount that the purchaser proposed to pay, so that any creditor or a combination of creditors may step in within the five days allowed by the statute and bid a greater sum for the goods offered and

Digitized by Google

thus defeat the sale contemplated and avoid the contract made between the seller and the purchaser, although they both may have acted in good faith and without any intention of defrauding creditors. It is doubtless true that there have been many sales of the goods of merchants made for the purpose of defrauding creditors, and that a statute imposing reasonable restrictions upon such sales ought to be enacted. But I think that the statute under consideration imposes an unnecessary and an unreasonable restriction upon the power of persons to contract, and that merchants could not in many instances comply with its requirements, and that it, in effect, prohibits parties from contracting for the purchase and sale of a stock of goods even though both parties act in the best of faith and without any intention of defrauding creditors.

[*Dissenting opinions in next issue.*]

Fidelity Bonds—Conditions—Notice of Default—Scope of Bond.

In Fidelity and Casualty Co. of New York v. Bank of Timmonsville, decided by the U. S. Circuit Court of Appeals, Fourth Circuit, in May, 1905, 139 Fed. 101, it was held that where a fidelity bond provided that any "willful misstatement" or suppression of fact by the employer in his statement or declaration concerning the employed, should render the bond void from the beginning, the phrase "willful misstatement" was intended to mean any material false statement made with knowledge of its falsity, voluntarily, and not inadvertantly, and hence an instruction that the bond was not avoided unless the misstatements were made "with intent to secure renewals of the bond" was erroneous.

It was further held that where a fidelity bond provided that any willful misstatement or suppression of fact by the employer concerning the employed should render the bond void, a mere belief on the part of the employer's president that it was immaterial whether the questions asked were answered truly or not did not render such answers immaterial.

It appeared that a bank cashier was given a leave of absence on August 17, 1901, which expired on August 22d. His failure to return did not arouse suspicion until August 26, when an examination of his books was made, which disclosed his defalcation. His sureties were then telegraphed, either on the 26th or 27th, whereupon each sent a representative, who participated in the examination of the books during the latter part of August, and on September 2 a formal notification of the cashier's flight and defalcation was sent to defendant surety company. It was held that whether defendant was given "immediate" notice of the defalcation, as required by the fidelity bond, was for the jury.

It was also decided that where a bank cashier's fidelity bond, given March 7, 1901, covered only acts and defaults committed during its currency and within twelve months next before the date of the discovery of the act or default on which the claim was based, it did not cover an alleged larceny of silver coin claimed to have been deposited May 19, 1900, but not found in the bank's vaults when the cashier absconded in August, 1901, there being no evidence as to when the same was taken.

Bankruptcy—Right to Set-off Damages for Tort Denied.

In the bankruptcy proceeding of In re Becker Bros., in the U. S. District Court for the Middle District of Pennsylvania (139 Fed. 366), it is held that Bankruptcy Act, July 1, 1898, ch. 541, sec. 68a (30 Stat. 565), providing for a set-off of mutual debts or mutual credits, does not authorize the setting off against a claim of the landlord for rent under a lease to the bankrupt of an unliquidated claim for damages in favor of the bankrupt, sounding in tort, and arising independently of the contract of lease. The case was heard on exceptions by the bankrupt to the refusal of the referee to allow a claim for such damages by way of set-off to the claim of the landlord for rent. In overruling the exceptions, Archbald, district judge, said:

Attempt is made in this case to set off against a claim for rent, which has been duly proved, a counterclaim for damages against the landlord for negligently allowing water to come in upon the premises leased by the bankrupts, by which the bowling alleys which they had constructed there were injured. The referee has found in favor of the landlord on the merits, but he has also decided that the claim for damages is not, in any event, available as an offset, being unliquidated, and arising out of a tort, and, as the latter ruling effectually disposes of the case, and must unquestionably be sustained, it is not necessary to consider the other.

If the case were to go by the State law, it is clear that no such set-off or counter claim would be maintainable. It does not arise out of any duty imposed on the landlord by that relation, or the covenants of the lease, but is admittedly based on the larger obligation outside of that, by which, as it is said, he was bound to do or suffer no act by which the tenants should be injured or interfered with in the enjoyment of the premises demised. But it was expressly held in Groetzinger v. Latimer, 146 Pa. 628, 23 Atl. 393, following a number of preceding cases, that matters sounding in tort, and arising out of a different transaction, can not be used as a set-off against an unrelated claim. In that case, to make the analogy complete, the plaintiffs sued for rent; and the defendants put in a counter claim for damages sustained by reason of the unlawful seizure of their property on landlord's warrant, and the consequent interference with and injury to their business. But it was held that this, in effect, was a tort, which would form the subject of an action ex delicto, and could not, therefore, be brought in as a set-off.

The case is to be disposed of, however, by a reference to the bankruptcy act, and the question is as to what is there provided. By section 68 (act July 1, 1898, c. 541, 30 Stat. 565, U. S. Comp. St. 1901, p. 3450, it is declared:

"(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid."

Also that:

"(b) A set-off or counter claim shall not be allowed in favor of any debtor of the bank-

Digitized by Google

rupt which is not provable against the estate."

The bankruptcy act of 1867 had a substantially similar provision, which was itself taken from the earlier English acts, under which it was decided that by "mutual credits" are meant such as must, in their nature, terminate in debts, or a debt be in the contemplation of the parties. Ross. v. Hart, 8 Taunt. 499, 2 Smith's Lead Cases, 309; Naoroji v. Bank of India, L. R. 3 C. P. 444; Libby v. Hopkins, 104 U. S. 303, 26 L. Ed. 769. It was accordingly held in the latter case that in a suit by an assignee in bankruptcy to recover money sent to the defendants by the bankrupt in trust to be applied to a specific purpose, a debt due by the bankrupt to the defendants could not be set off. It is true that in Booth v. Hutchinson, L. R., 15 Eq. 30, a tenant, from whom rent was due to the bankrupt estate, was held entitled to set off damages arising out of a breach of the lease. And in Peat v. Jones, 8 Q. B. Div. 147, and Jacob v. Kipping, 9 Q. B. Div. 113, in an action to recover the unpaid balance due on goods contracted to be sold and delivered by the bankrupt, damages accruing in the one case from the non-delivery of a part of the goods, and in the other from fraudulent representations made in the course of the sale, were allowed to come in. But these cases arose under the more recent English acts, in which the words "mutual dealings"—a much more comprehensive term than "mutual credits," appeared (although in Makehan v. Crow, 15 Com. Bench (N. S.) 47, a similar ruling was made under the prior law); and in Peat v. Jones, as well as in Jacob v. Kipping, it is pointed out that the damages sought to be set off grew directly out of a breach of the obligation involved in the contract of sale. That there was no intention of departing from the earlier construction by anything which is so decided is shown by Palmer v. Day (1895) 2 Q. B. 618, where it was said by Russell, C. J.:

"The section [of the English bankruptcy act relating to the subject of set-off], in its present shape, has been held applicable to all demands provable in bankruptcy, and so to include claims as well in respect of debts as of damages, liquidated or unliquidated, provided they arise out of contract. But whilst the right of set-off has been thus widely extended, it is still subject to the limitation that the 'dealings' must be such that, in the result, the account contemplated in the section can be taken in the way described. In other words, the dealings must be such as will end on each side in a money claim."

Consistently with this it was also held in Eberle Hotel v. Jonas, 12 Q. B. Div. 459, that where, in winding up proceedings, where the bankruptcy rule prevails, the liquidator of the company which is being wound up is entitled to a return of goods in specie, and has brought an action of detinue therefor, the defendants will not be allowed to assert a counterclaim for goods supplied, on the ground of mutual dealings.

These cases consider the question from the reverse standpoint from which it comes up here; that is to say, the right of set-off is not claimed in behalf of the estate, but against it. But that is not material. The principle is the same, and, by it, it is clear that, from whatever side considered, it can not be regarded as extending to a claim for damages, sounding in tort, and growing out of an entirely different and independent transaction. The right of action, no doubt, vested in the trustee, in the present instance, to recover the damages alleged to have been done to the bankrupts' property. Section 70 a (6), 30 Stat. 566 (U. S. Comp. St. 1901, p. 3451). And the composition offered by the bankrupts having been accepted and confirmed, this right has now reverted to them again. Section 70b. So that no difficulty arises upon that score. The bankrupts would therefore unquestionably be entitled to have the claim for rent reduced in the way they ask, in relief of the composition which they are to pay, if only the counter claim which they set up could be entertained. But for the reasons stated, it can not be, and the action of the referee in rejecting it must therefore be sustained. The suggestion that, unless the set-off is allowed, the bankrupts will be without remedy, even if it afforded the basis for an argument, is met by the consideration, which has just been alluded to, that by the express provision of the act the bankrupts are reinvested by the composition with all their pre-existing rights, which they can enforce by action, the same as though bankruptcy had not intervened. Stone v. Jenkins, 176 Mass. 544, 57 N. E. 1002, 79 Am. St. Rep. 343; 4 Am. Bankr. Rep. 568.

The exceptions are overruled, and the action of the referee, in refusing to reduce the rent by the set-off claimed, is confirmed, without prejudice, however, to the merits of the claim, which are not passed upon.

Contributory Negligence—Last Chance.

[Central Law Journal.]

The Supreme Court of New Hampshire, in the case of Yeaton v. Boston & M. R. R., 61 Atl. Rep. 522, recently rendered an interesting opinion in which the evidence tended to show that Yeaton drove toward the crossing without exercising care to ascertain whether a train was approaching until he was within 30 feet of the track. At that point he was traveling at the rate of 4 miles an hour, and the train, running at a speed of 40 miles an hour, was some 300 feet distant. The train occupied the farther one of of two tracks which crossed the highway. When a short distance from the crossing, the horse attempted to turn down the track, but Yeaton reined him about and urged him upon the crossing. The train struck the wagon in which Yeaton was riding, and killed him instantly. The fireman saw Yeaton from a time when the train was some 900 feet from the crossing until the moment of the collision. There was evidence tending to show that the speed of the train could have been slackened, and the collision averted, by the application of the brakes at the time when Yeaton attempted to cross the track. There was a conflict of testimony as to when the brakes were applied.

The court said: "The only position taken in support of the exceptions to the refusal to order a nonsuit or verdict to instruct as requested upon the question of liability is that Yeaton's attempt to cross the track in advance of the approaching train was negligence, which must

Digitized by Google

prevent a recovery in this suit. In the discussion in Gahagan v. Railroad, 70 N. H. 441, 450; 50 Atl. Rep. 146, 151; 55 L. R. A. 426, it was said: "The plaintiff's negligent occupation of the track did not authorize the defendants to run upon and injure him, if by care they could have avoided it. . . . If the engineer knew, or ought to have known, that the plaintiff's negligence would place him upon the crossing when the train reached it, the engineer was equally bound to avoid the collision as if he saw the plaintiff actually on the track." These views were adopted as the basis of the decisions in Little v. Railroad, 72 N. H. 61, 62; 55 Atl. Rep. 190, and Parkinson v. Railway, 71 N. H. 28, 32; 51 Atl. Rep. 268. The sole ground of negligence in the defendants upon which the case was submitted to the jury was whether the defendants' servants in charge of the train, observing the deceased's proximity to the railroad, did all they ought to have done to prevent the collision, after they knew, or ought to have known, of his attempt to cross the track. If men of ordinary prudence in the position of the defendants' servants would have known that Yeaton's act would place him upon the crossing at the time the train would reach it unless they did something to check the speed of the train, and could and would have avoided the collision, the failure of the trainmen to act with ordinary prudence was the legal cause of the injury. Upon the only ground of negligence charged against the defendants, Yeaton's conduct in attempting to cross under the circumstances, whether prudent or otherwise, was immaterial. The defendants had no right to kill him for his mistake in judgment, even if the error was one that a prudent man would have avoided. The defendants are equally liable, whether the injury was wilfully or negligently inflicted. Felch v. Railroad, 66 N. H. 318, 320; 29 Atl. Rep. 557.

There was evidence that the trainmen could have slackened the speed of the train if they had acted when they knew, or ought to have known, of Yeaton's attempt to cross before it. Whether they could or ought to have done so was for the jury. The defendants were not injured by the submission of the question of the plaintiff's care in attempting to cross the track, even if there were no evidence upon which it could be found that a man of ordinary prudence would have made the attempt. The ruling required the jury to find a fact not material to the plaintiff's case to entitle her to a verdict. The defendants can not complain of the additional burden placed upon the plaintiff. If the negligence charged against the defendants had been failure to give the warning signals, or to maintain a flagman, or other prior fault, the question of Yeaton's care in attempting to cross would have been material; but, as it is not, it is useless to consider whether there was evidence upon which the act could be found careful. When both parties are present, and due care on the part of either at the time would have prevented the injury, the manner in which the dangerous situation was created is immaterial, except as one of the circumstances by which the requisite degree of care is to be determined. A plaintiff who, by care, can not escape from the danger his own negligence has created, can recover of one who, by care, could have prevented the injury, even if his inability to protect himself arises from his own prior negligence. Nashua Iron & Steel Co. v. Railroad, 62 N. H. 159, 164. It could be found that Yeaton did all a prudent man could do after he decided to cross. His inability to protect himself after such decision arises from his mistaken judgment that it was safe or best for him to make the attempt, for there is no evidence or suggestion that he intended to commit suicide. If his mistaken judgment was due to failure to carefully observe or weigh the evidence presented by the situation, and was negligence, such conclusion rendered him unable to protect himself, precisely as if he had been unable for any other reason to exercise the judgment of a prudent man. The defendants, knowing the situation, were required to exercise such care as prudent men in their situation, with the knowledge they had, would exercise. Wheeler v. Railway, 70 N. H. 607, 50 Atl. Rep. 166, 54 L. R. A. 955; Edgerly v. Railroad, 67 N. H. 312, 36 Atl. Rep. 558; Batchelder v. Railroad, 72 N. H. 528, 530, 57 Atl. Rep. 926. If their exercise of such care would have prevented the injury, their failure to so act is its sole legal cause.

Whether the expression, "the mental and physical pain suffered by him in consequence of the injury," as one of the elements proper for consideration in assessing the damages in an action where death results from the injury complained of (Pub. St. 1901, ch. 191, sec. 12), refers merely to mental pain resulting from the physical injury is not important. The items of damage mentioned are not exclusive, but additional, and are to be considered "in connection with other elements allowed by law." It is not contended that mental pain preceding a physical injury, when caused by a wrongful act or neglect which results in such physical injury, is not an element of damage allowed by law. The section is a redraft of the provision as to damages found in section 1, ch. 71, p. 454, Laws 1887, without intent to change the meaning. Commr's. Rep. P. S., pp. iii, 615. When the commissioners used the word "injury" in place of "wrongful act or neglect," found in the earlier statute, if they did not understand the terms were identical, the addition of the general clause quoted establishes that no change in meaning was intended or made. The deceased, by his own carelessness, found himself in a dangerous position near the track. Either prudently or carelessly he attempted to cross in front of the train. He can not recover for fright due to his own acts, whether careless or prudent. Recovery can be had only for injury resulting from the negligence charged against the defendants—the failure to slacken the speed of the train. If such negligence caused him any fright or mental suffering preceding the injury, such mental pain was properly considered on the question of damages. It appears to be conceded that there was evidence of mental pain preceding the injury. If the instructions, as applied to the facts, did not confine the attention of the jury to mental suffering chargeable to the defendant's fault, they might properly have been more definite in this respect. If the instructions were not as definite as they might have been,

Digitized by Google

there was no request to make them more definite. The general objection that there could be no recovery for mental pain preceding the physical injury can not be sustained. This conclusion disposes of the exception to the argument of counsel upon this point.

The only remaining exception relied upon in the defendants' brief is to the statement made in argument by counsel that, when the firemen saw Yeaton, and was some 800 feet from the crossing, he ought to have warned the engineer; that he did not do so; and the argument from that fact that the fireman never notified the engineer. This suggestion did not misstate the evidence. There was evidence that the fireman saw Yeaton at least that distance from the crossing. What he ought to have done under the circumstances was an inference of fact to be found by the jury, as to which counsel could urge upon their attention his view as to the finding which should be made. The conduct of the fireman in one part of the transaction may have had some tendency to show what it was in another part. Whether the suggested inference should be drawn was for the jury.

Courts—Power of a Court to Act Upon Its Own Motion.

The extent to which the functions of the court are to be limited to those of an umpire between the parties is suggested by a recent Missouri decision holding that, irrespective of statute, the court, on its own motion, may set aside a verdict and order a new trial on the grounds of erroneous instruction, although no exceptions had been taken thereto. Nulton v. Croskey (1905), 85 S. W. Rep. 644.

The conception of the strict neutrality of the court seems to have been an early characteristic of the common law. The underlying idea was that the parties must learn the rules of the game at their peril and that it was their own concern if they threw away their chances. 2 Poll. & Mait. Hist. Eng. Law, 670; Pollock, 3 Col. Law Rev. 510.

Such a rule carried to its logical conclusion would tend to make of the court a mere figurehead and would lead to a miscarriage of justice unless somewhat modified. Accordingly it was early decided in England that whenever one had been convicted and the time in which he might make motion had elapsed, the court might grant a new trial of its own motion where it appeared that injustice would otherwise be done. King v. Gough (1781), Douglas, 791; Rex v. Atkinson (1784), 5 D. & E. 437, note. Likewise in civil cases the court might grant a new trial where the party aggrieved was disqualified to make the motion. Birt v. Barlow (1779), Douglas, 170.

The decided tendency of modern English decisions is away from the umpire theory and towards the position that the judge's function is to find out the truth. To this end he may call and examine witnesses not called by either party, and without his leave neither party has a right to cross-examine them. Coulson v. Disborough (1894), 2. Q. B. 316. But the same is not true of American development.

The principle followed here has been to restrict the exercise of the court's discretion lest private rights be impaired. It has been held that a judge may not set aside a verdict on his own motion unless rendered under circumstances making it legally void, such as misconduct of the jury. Lloyd v. Brinck (1871), 35 Tex. 1; nor rule out evidence which has gone to the jury without objection. Barker v. Blount (1879), 63 Ga. 423, semble.

Even under the limitations imposed by the umpire theory, however, the result reached in Nulton v. Croskey would seem proper. Where the court has contributed to the unlawful and unjust result under a mistaken view of the law, it is not only its right, but its duty to itself, to order a new trial. Wolmerstadt v. Jacobs (1883), 61 Iowa, 372. A fair umpire may not champion either side, therefore if he has prejudiced the rights of either side by active error on his part, he should be permitted to rectify such mistake.

The exercise of this power is not a matter of right which a party may demand, but rests in the court's discretion. Richmond v. Pogue (1865), 36 Mo. 313. A logical extension of this principle might justify the court's acting upon its own initiative in cases where a part of the court, for instance the jury, has been guilty of error to the detriment of one of the parties, as by rendering a verdict in direct violation of proper instructions, or one clearly insufficient, or one not responsive to the issues. Allen v. Wheeler (1880), 54 Iowa, 628; R. R. v. Cir. Judge (1896), 110 Mich. 173.—Columbia Law Review.

Principal and Agent—Burden of Proving Contract for Commissions.—In an action by an agent for commissions, the burden is upon him to prove an agreement for the commissions sought to be recovered. Warwick v. North American Inv. Co. of United States, (Mo.), 87 S. W. Rep. 78.

Principal and Agent—Knowledge of Agent.—Knowledge of an agent's agent, who is not agent of the first principal, held not imputable to such principal. North British Mercantile Ins. Co. of London and Edinburgh v. Union Stock Yards Co. (Ky.), 87 S. W. Rep. 285.

The London Chronicle for January 11, 1871, narrates the following: "An attorney in Dublin having dined by an invitation with his client several days pending a suit, charged 6s. 8d. for each attendance, which was allowed by the master on taxing costs. In return for this the client returned the master attorney with a bill for his eating and drinking, which the attorney refusing to pay, the client brought his action and recovered the amount of his charge. But he did not exult long in his victory, for in a few days the attorney lodged an information against him before the commissioners of excise for retailing wine without a license; and not being able to controvert the fact, to avoid an increase of costs he submitted, by the advice of counsel, to pay the penalty, a great part of which went to the attorney as informer."

Digitized by Google

Master and Servant—Duty of Master Toward Safety of Servant.—It is the continuing duty of a master to use reasonable care to furnish his employees with a reasonably safe place to work, with reasonably safe appliances, and to use reasonable care to keep them in reasonably safe condition.—Lee v. St. Louis, M. & S. E. R. Co. (Mo.), 87 S. W. Rep. 12.

Master and Servant—Servant's Knowledge of Defects.—Knowledge actually acquired or to be imputed to an employee of a defective condition of the appliance furnished him by the master, without an appreciation of the danger caused by it, does not bar a recovery for injuries sustained by the employee caused by such condition. Peck v. Peck (Tex.), 87 S. W. Rep. 248.

Carriers—Injury to Passenger Alighting During Journey.—A passenger may alight from his train at a switch track near an intermediate staton without forfeiting his status. Texas Midland R. R. v. Ellison (Tex.), 87 S. W. Rep. 213.

Carriers—Injury to Passenger Boarding Train.—Undue prominence held not given to the character of duty required of a conductor by paragraphs of a charge in an action for injury to a passenger while boarding a train. Houston & T. C. R. Co. v. Copley (Tex.), 87 S. W. Rep. 219.

Carriers—Jewelry as Baggage.—Jewelry carried in a woman's trunk for wear, may be found by a jury to be baggage. Hubbard v. Mobile & O. Ry. Co. (Mo.), 87 S. W. Rep. 52.

Bills and Notes—Burden of Showing Failure of Consideration.—In an action on a note given for the purchase price of machinery, the burden of showing failure of consideration was on defendant. Masterson v. F. W. Heitmann & Co. (Tex.), 87 S. W. Rep. 227.

Brokers — Commission. — A custom which gives to the broker 5 per cent of the purchase price of land for assisting in its sale, irrespective of the amount, value or character of the services rendered, is unreasonable and void. Penland v. Ingle (N. Car.), 50 S. E. Rep. 850.

Carriers—Connecting Carrier's Negligence.—Where a carrier receives goods for transportation to a destination beyond its terminus, its common-law liability ends with delivery to the succeeding carrier. Hubbard v. Mobile & O. Ry. Co. (Mo.), 87 S. W. Rep. 52.

Corporations—Validity of Debts.—A corporation may assume payment of advancements made before the incorporation was effected. Pitman v. Chicago Joplin Lead and Zinc Co. (Mo.), 87 S. W. Rep. 10.

Master and Servant—Contributory Negligence.—In an action for injuriss to plaintiff by being thrown from defendant's log train, plaintiff held guilty of contributory negligence as a matter of law in voluntarily taking an insecure position on the pilot of the engine. Burns v. Chronister Lumber Co. (Tex.), 87 S. W. Rep. 163.

Municipal Corporations—Presumption that City Officials Perform Their Duty.—The presumption that city officers do their duty in respect to keeping sidewalks in repair is applicable only where there is no evidence on the subject.—Miller v. Town of Canton, (Mo.), 87 S. W. Rep. 96.

Negligence—Injury to Licensee.—Consent of an owner of land to the use as a passageway of a path across his land may be inferred, where it has been used for some time continuously without objection.—Etheredge v. Central of Georgia Ry. Co. (Ga.), 50 S. E. Rep. 1003.

Negligence—Injury to Servant of Independent Contractor.—In an action for injuries to a servant of an independent contractor engaged in erecting a building for defendant near a private car track, evidence held to justify submission to the jury of the issue of defendant's negligence.—Sack v. St. Louis Car Co. (Mo.), 87 S. W. Rep. 79.

Corporations—Adopting Contract of Promoter.—A corporation is not liable for legal services rendered at the request of one of its promoters, unless after its organization it adopted the contract made by the promoter. Jones v. Smith (Tex.), 87 S. W. Rep. 210.

Corporations—Sale of Stock.—A solvent corporation can not be placed in receivership to enable a stockholder, who has deposited his stock as collateral for a debt, to have an account of its assets. Huet v. Piedmont Springs Lumber Co. (N. Car.), 50 S. E. Rep. 846.

Principal and Agent—Authority of Agent to Execute Note.—A negotiable note in the hands of an agent, indorsed in blank by the principal, can not be regarded by a stranger having notice of agency as prima facie proof of title in the agent. Merchants & Manufacturers Nat. Bank v. Ohio Valley Furniture Co. (W. Va.), 50 S. E. Rep. 880.

Principal and Agent—Authority to Waive Provisions of Life Policy.—A principal is not bound by the acts of the agent beyond the scope of his authority, where the person dealing with the agent had notice of such limitation. Hutson v. Prudential Ins. Co. of America (Ga.), 50 S. E. Rep. 1000.

Digitized by Google

Naturally Dom Smart.

An Irishman with no education having found that he had a natural gift of gab, had become something of a pettifogger in a country "deestrict." One day he was engaged against a lawyer of education and learning, but little accustomed to the methods of the county pettifogger or county justice, which, to say the least, would scarcely have passed muster in a court of record, but at the same time were popular in the country districts where this blatherskite held sway with conscious pride to an admiring throng, which always gathered when there was a "case on." The Irishman had come up to the expectation of his admirers and had caused several laughs at his citified opponent's expense during the trial, and by the time he got to the jury was pretty well puffed up with his own importance. On the jury was another Irishman, who seemed to have taken great interest in the proceedings. He was seated in the front row of chairs, looking up into the face of his swelled-up fellow countryman, who now began his address as follows: "Gintlemen of the jury, it has not bin me fortchin to attind any ov the universities, or the hoigh schools, or the noight schools, or the business colleges, an' its little iducation thot oiv had at all—faith an' it is not aven a common school iducation"—"but ye'r naturally dom smart," broke in our Irish juryman, while a roar of laughter punctured his inflated compatriot. Being defeated, he wabbled around for a few moments and then fell down completely, while his elated opponent walked off with the verdict.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Edward J. Adams, Jr., late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. WILLIAM F. ADAMS, 321 C. st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,192. Administration. [Seal.] 42-3t

E. H. Thomas and A. Leftwich Sinclair, Attorneys

In the Supreme Court of the District of Columbia,

Holding a District Court.

In re Extension of Nineteenth Street from Woodley Road to Baltimore Street.

No. 658. District Court.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress, approved March 3, 1905, entitled "An act for the extension of Nineteenth street from Woodley road to Baltimore street," have filed a petition in this court praying the condemnation of the land necessary for the extension of said Nineteenth street from Woodley road to Baltimore street, in the District of Columbia, with a uniform width of fifty feet, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition and marked "Exhibit D. C. No. 1;" and praying, also, that a jury of seven (7) judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia, to assess the damages each owner of land taken may sustain by reason of the extension of said Nineteenth and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is, by the court, this 13th day of October, A. D. 1905, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 30th day of October, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Evening Star, The Washington Times, and The Washington Post, newspapers published in said District, before the said 30th day of October, A.D. 1905. It is further ordered that a copy of this notice and order be served by the said marshal, or his deputies, upon such owners of the land to be condemned herein as may be found by said marshal or his deputies, within the District of Columbia, before the said 30th day of October, A. D. 1905. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 42-1t

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Annie E. Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of October, 1905. RICHARD HARRISON JOHNSON, 709 C st. S. W.; WILLIAM A. WIMSATT, 215 8th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,216. Adm. [Seal.] 42-3t

Digitized by Google

Legal Notices.

Joseph H. Stewart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term of Probate Court.
In re Estate of Milly Cook, deceased.
No. 12,477.

This cause coming on to be heard upon the petition of Robert W. Brown, executor herein, reporting the sale of lot five (5) in A. H. Lee's recorded subdivision of lots numbered C and D in Elizabeth Morrison's subdivision of square numbered two hundred and eighty (280) to William A. Hedrick for the sum of eight hundred and thirty-five ($835.00) dollars, it is this 17th day of October, A. D. 1905, by the court ordered that said sale be ratified, unless cause to the contrary be shown on or before the 10th day of November, A. D. 1905; this order to be published once a week in the Washington Law Reporter for three successive weeks before said date. WENDELL P. STAFFORD, Justice. [Seal]
A true copy. Attest: M. J. Griffith, Deputy Register of Wills. 42-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Little C. Osmun**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Asst. Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,184. Administration. [Seal.] 42-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Celia E. V. Beall, Deceased.
No. 12,871. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Lizzie B. Gladman, it is ordered this 16th day of October, A. D. 1905, that notice be and hereby is given to **M. Elmer Carrier**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 42-3t

A. A. Birney and G. E. Tralles, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
John W. Butterfield, Complainant, v. William L. Jones, Receiver, and Eureka Insurance Company of Pittsburg, Pennsylvania, Defendants.
In Equity. No. 25,698.

The object of this suit is to establish and enforce an equitable lien in favor of the complainant upon a certain draft or warrant issued by the United States in settlement of the claim of the Eureka Insurance Company of Pittsburg, Pa., William L. Jones, receiver, for $5,000, which said sum has been appropriated by Congress to pay said claim, and for a receiver to take possession of said draft or warrant, and endorse and collect the same. On motion of the complainant, it is, this 20th day of October, A.D. 1905, ordered that the defendants, **William L. Jones and the Eureka Insurance Company of Pittsburg, Pa.**, a corporation, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three consecutive weeks before said return day in The Washington Law Reporter. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 42-3t

Legal Notices.

Isaac H. Ford, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alfred Ford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **20th day of September, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1906. JOHN FORD, 312 2d st. S. E.; MARY M. FORD, 312 2d st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,163. Adm. [Seal.] 42-3t

Thomas P. Woodward and Geo. R. Linkins, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William R. Woodward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **13th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1905. THOMAS P. WOODWARD, 507 E st. N. W.; GEO. R. LINKINS, 507 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,175. Administration. [Seal.] 42-3t

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notce That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta M. Martin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1905. BENJAMIN F. MARTIN, 617 L st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,203. Administration. [Seal] 42-3

SECOND INSERTION.

Saml. Maddox, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas Culhane**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of October, A. D. 1 06**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of October, 1905. BRIDGET M. CULHANE, 921 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,199. Administration. [Seal.] 41-3t

Lyon & Lyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louise Lansburgh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of October, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. GUSTAVE LANSBURG, 1018 Vt. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,211. Administration. [Seal.] 41-3t

Digitized by Google

Legal Notices.

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Irvin B. Wright**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,195. Administration. 41-3t

---

Barnard & Johnson, Attorneys,

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Brison Norris**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. MARY E. NORRIS, 501 H. st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 41-3t

---

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Adolf Cluss**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1905. LILLIAN C. DAW, 2801 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,179. Administration. [Seal.] 41-3t

---

Bernard P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Catalina Juliana Mason Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10 day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. CASSIE MASON MYERS JULIAN-JAMES, 1602 20th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,185. Administration. [Seal.] 41-3t

---

J. J. Waters, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Stanley Pearce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of October, 1905. GEORGE PIMPER, 3245 M st. N. W.; HENRY F. KUNKEL, 806 20th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,062. Administration. [Seal.] 41-3t

Legal Notices.

Albert E. Shoemaker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Richard Edwards, Deceased.
No. 13,213. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said deceased, by Susan Edwards, it is ordered, this 12th day of October, A. D. 1905, that notice be and hereby is given to **Sarah Wilkins, Alice Minor, and Garrit S. Edwards**, and to all others concerned, to appear in said court on **Wednesday, the 15th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 41-3t

---

E. H. Thomas

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 48 and 52 Q street northeast, in the county of Washington, District of Columbia, being lots numbered one hundred and five (105) and one hundred and seven (107) in Francis A. Blundon's subdivision of lots in square numbered three, "West Eckington," as per plat recorded in liber county No. 11, folio 29, of the records of the office of the surveyor of the District of Columbia, to Charles L. Selecman for the sum of seventy-five hundred ($7,500) dollars cash, less three (3%) per cent brokerage commission, it is by the court, this 6th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **6th day of November, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 41-3t

---

Mason N. Richardson, Solicitor

In the Supreme Court of the District of Columbia,
Ira T. Bryant et al. v. Jerome A. Johnson et al.
No. 24,729. Equity Docket No.—

The object of this suit is to subject lot 36, sq. 194, in the District of Columbia, to the claim of complainants as judgment creditors, and to divest defendants of all title and interest thereof. A copy of this order to be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to the return day hereto. On motion of the complainant, it is this 10th day of October, A. D. 1905, ordered that the defendant, **Robert H. Bundy**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. [Seal] True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 41-3t

---

George F. Graham, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Columbus J. Eslin**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 8th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 9th day of October, 1905. BENJ. J. ESLIN, GEO. F. GRAHAM, by Geo. F. Graham, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,505. Administration. [Seal.] 41-3t

Digitized by Google

Legal Notices.

THIRD INSERTION.

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Administration. No. 12,549.

The executor and trustee having reported that he has sold premises No. 909 H street northeast, Washington. D. C., being lot twenty (20) in Moses Kelley's subdivision of square nine hundred and thirty-four (931), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in book W. B. M., page 353, to Paul Leverone for thirty-seven hundred and fifty ($3,750) dollars cash, less three (3) per cent brokerage commission, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **3d day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. [Seal] 40-3t

---

Barnard & Johnson and George Francis Williams,
Solicitors for Complainant

In the Supreme Court of the District of Columbia.
Ernest L. Schmidt, Complainant, v. Ada G. Earhart Ross et al., Defendants. No. 25,522, Equity Doc. 57.

The object of this suit is to sell certain property in the city of Washington, in the District of Columbia, described as follows, and being, to wit: The lots 17, 18, 20, and 21, in Butler's subdivision of lots in square 226, also original lot 1 in square 252, together with the improvements thereon, and to distribute the proceeds among the parties to this cause in accordance with their respective rights and interests, and also to substitute a trustee pending any such sale. On motion of the complainant, by his solicitors, Barnard & Johnson and George Francis Williams, it is, by the court, this 3d day of October, A. D. 1905, ordered that the defendants, **Ada G. Earhart Ross, Jessie Elizabeth Earhart McGuire, Virginia Butler Earhart Ferguson, Carter Earhart, and Lyttleton Reese,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 40-3t

---

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Hannah Lavinia Bartlett, Deceased.
No. 13,193. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William Holabird and Joseph Willard Preston, as executors, it is ordered this 4th day of October, A. D. 1905, that notice be and hereby is given to **Agnes Theodosia von Konowsky, Mary Edna Preston, Julia Starr Preston, Joseph Willard Preston, Jr., and Henry Grant Preston,** and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 40-3t

---

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Legal Notices

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George H. Denney,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. FANNIE E. CARTER, Nichols ave., Anacostia, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No 13,173. Administration. [Seal.] 40-3t

---

Brandenburg & Brandenburg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Gustavo L. Roxer, Jr.,** late of Austria, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of August, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1905. F. WALTER BRANDENBURG, Fendall Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No.13,133. Administration. [Seal.] 40-3t

---

Robt. E. Mattingly, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Helen Rowland,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. ROBERT E. MATTINGLY, 472 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,167. Administration. [Seal.] 40-3t

---

George Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Maria W. Richards,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of September, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1905. CHARLES H. RICHARDS, 35 Hillside ave., Montclair, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,089. Administration. [Seal.] 40-3t

---

Francis H. Stephen, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George T. Morgan,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1905. JAMES A. KEMP, Police Headquarters. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,200. Administration. [Seal.] 40-3t

Digitized by Google

Legal Notices.

Sheehy & Sheehy, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Thomas Murphy, Deceased.
No. 3356. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, by Catherine J. Murphy, it is ordered this 3d day of October, A. D. 1905, that notice be and hereby is given to **John Murphy, Edward Murphy, and Thomas Murphy,** and to all others concerned, to appear in said court on **Wednesday, the 8th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t

F. P. Sheehy, Attorney
In the Supreme Court of the District of Columbia,
Holding a Special Term as a Probate Court.
In re Estate of Michael Burke, Deceased.
Administration, No. 11,704.

Upon consideration of the report herein filed by Charles J. Springmann, executor of the last will and testament of Michael Burke, deceased, showing that he has sold at public auction to John W. Weitzel for twenty-five hundred ($2.500) dollars cash the real estate mentioned and described in the proceedings had in the above entitled matter, namely, lot numbered fourteen (14) in square numbered five hundred (500), improved by premises No. 495 L street southwest, it is, by the court, this 3d day of October, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **4th day of November, 1905.** Provided this order be published once a week

[Seal] for three successive weeks in the Washington Law Reporter before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 40 3t

P. J. Ryan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert Georgii, Deceased.
No. 13,162. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ignatius Nau, it is ordered this 2d day of October, A. D. 1905, that notice be and hereby is given to **Max Georgii and Herrmann Georgii,** and to all others concerned, to appear in said court on **Monday, the 6th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days

[Seal] before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner. Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t

M. A. Mess, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Ottilie Aumann, Deceased.
No. 13,169. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frank A. B. Wünnenberg, it is ordered this second day of October, A. D. 1905, that notice be and hereby is given to **Christian Aumann** (a brother), **Ottilie Aumann** (a niece), and **Walburga Aumann** (a stepsister), and to all others concerned, to appear in said court on **Friday, the 10th day of November, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and New Yorker Staatszeitung once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 40-3t

Legal Notices.

Hallam & Hallam, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Evalyn Doughty,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1905. CAVOUR O. BOHRER, 113 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,906. Administration. [Seal.] 40-3t

A. Coulter Wells, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Buchanan,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of September, A. D. 1906:** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1905. MARY WEAVER, 1518 Que st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,154. Administration. [Seal.] 40-3t

FIFTH INSERTION.

[Filed September 18, 1905.]

A. Leftwich Sinclair, Attorney for the District of Columbia
In the Supreme Court of the District of Columbia,
Holding a Special Term as a District Court of the United States for the District of Columbia.
In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at **2 o'clock p. m. on the 31st day of October, A. D. 1905,** at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 3 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE

[Seal] W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 38-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 43

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - OCTOBER 27, 1905

CONTENTS.

Editorial 673
COURT OF APPEALS OF NEW YORK:
Edmund Wright, respondent, v. Edward Hart, appellant 674
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Stephen U. G. Johnson, appellant, v. The United States 679
Legal Notices 683

Hearing of Cases on the Appeal Calendar.

The cases on the appeal calendar of the Supreme Court of this District have been certified for trial to Criminal Court No. 2, before Mr. Justice Gould. The hearing of these cases, which include those coming up by appeal from justices of the peace and those removed by certiorari into the Supreme Court for trial, will begin on Wednesday, November 1, 1905, when the first ten cases on the calender will be called.

An important change has been made in the rules of the Supreme Court of the District, whereby cases removed into that court by certiorari, under section 8 of the Code, will be placed on the trial calendar, instead of on the appeal calendar as heretofore. The amendment of the rules, as promulgated by the court, is as follows:

"Ordered, that Rule 15 of the Common Law Rules of the court be, and it hereby is, amended by adding thereto an additional section, to read as follows:

"'Sec. 5. After plea filed and issue joined, and at least ten days before the term of the court at which the cause stands for trial, either party may give notice of trial and furnish the clerk with a note of issue, as prescribed in Common Law Rules of this court 35 and 34; thereupon the clerk shall enter the cause on the trial calendar.' "

Changes in the Clerk's Office of the Supreme Court of the District.

Several changes have been recently made in the clerk's office of the Supreme Court of the District. Mr. A. G. Buhrman, for some years clerk of Circuit Court No. 1, has been promoted to docket clerk on the law side of the court, to succeed Mr. William E. Williams, promoted to financial clerk. Mr. F. E. Cunningham, formerly clerk in Equity Court No. 1, is promoted to be docket clerk on the equity side of the court. Mr. Harry Bingham, formerly an assistant in the office of the United States attorney, and Mr. Wm. F. Lemon have been appointed as assistant clerks and assigned, respectively, to Circuit Court No. 1 and Equity Court No. 2. Mr. Harvey Given, for some time clerk of Criminal Court No. 2, has resigned, to accept a responsible position in the office of the United States attorney for this District, and has been succeeded in that court by Mr. S. McComas Hawkins.

MR. FREDERICK S. TYLER, for several years the crier of the Court of Appeals of this District, has resigned to enter the practice of the law. Mr. Tyler is a graduate of the Georgetown University Law School and a young man of decided ability. He will be associated in practice with former United States attorney Morgan H. Beach, with offices in the Colorado Building. Mr. Tyler made for himself a host of friends during his term of service in the Court of Appeals, who wish him much success. He will be succeeded as crier by Mr. Howard C. Riley, for some years a capable and efficient clerk in the office of the editor of THE LAW REPORTER. That he will discharge the duties of his new position with fidelity to the court and credit to himself may safely be predicted.

Assistant United States Attorney Harvey Given.

Mr. Harvey Given has been appointed by United States Attorney Baker as an assistant in his office and has entered upon the discharge of the duties of the position. Mr. Given has a long record of efficient service in the office of the United States attorney for this District and in the clerk's office of the Supreme Court of the District. Though only recently admitted to the bar, his exceptional qualifications for his new position are recognized by all. Mr. Given numbers among his friends practically the entire membership of the bar of this District, who welcome him most cordially as one of their number. They not only wish and expect him to succeed, but are confident that he will earn distinction in the discharge of his duties.

Digitized by Google

Court of Appeals of New York.

EDMUND WRIGHT, AS TRUSTEE IN BANKRUPTCY OF W. C. LOFTUS & CO., BANKRUPT, RESPONDENT,

v.

EDWARD HART, APPELLANT.

[For majority opinion, see ante, p. 658.]

VANN, J. (dissenting)—The only question presented by this appeal is whether the statute regulating the sale of merchandise in bulk (L. 1902, chap. 528) violates any provision of the State or Federal constitution. The object of the act was to suppress a widespread evil, well known to current history and condemned by repeated adjudications in this court and in all the leading courts of the State from time out of mind. That evil is the tendency and practice of merchants who are heavily in debt to make secret sales of their merchandise in bulk for the purpose of defrauding creditors. Common observation shows that when a dealer has reached a point in his business career where he can not go on owing to the claims of creditors, the temptation is strong and the practice common of making a fraudulent sale. Fraud works in secret, and the bargain is closed and the purchaser in possession before the creditors know anything about it. The evil is difficult for the courts to handle, because the evidence to uncover the furtive scheme must, as a rule, be drawn from hostile witnesses, usually relatives or intimate friends of the seller, who took part in the fraud and shared in the plunder. All those who have had to do with the investigation of such transactions realize how well these frauds are protected by the forms of law and how frequently they are defended by perjury. The form of the fraud varies with the skill of the perpetrator and his advisers, but the unvarying purpose is to enable the debtor to hold and enjoy property which equitably belongs to his creditors. Inadequacy of consideration, absconding with the proceeds of the sale and the preference of fictitious claims are familiar methods. Many other means of holding on to property and concealing the facts are resorted to, and it is not uncommon to see a dealer in possession of all that he had before he failed, and, acting under another name, carrying on the same business with the same stock, all unpaid for, in unblushing defiance of his creditors. Whatever the method of committing the fraud, its success depends on secrecy and perjury.

When a merchant owes more than he can pay he has no substantial equity in his stock of goods, and the claims of his creditors are superior to his own. The courts may not only prevent him from parting with his property, but may seize and sell it and apply the proceeds upon his debts. If an execution issued against his property is returned unsatisfied, he may be compelled to disclose under oath all his business transactions, tell what he has done with his estate, both real and personal, and the proceeds thereof, and if he still holds any property in the name of some one else, to divulge all the facts relating thereto (Code Civ. Pro., secs. 2432, 2463). He may be imprisoned on civil process and punished criminally for making a fraudulent disposition of his property, and any person who is a party or privy to the fraud may be punished in the same way (Code Civ. Pro., sec. 549; Penal Code, sec. 586). Interference with his liberty and propetty by such methods has never been successfully questioned as a violation of fundamental rights. Many restraints upon freedom of contract, some of which reach back to our colonial history, have passed without challenge, or, if challenged, have uniformly been sustained as valid. The Statute of Frauds, the act to prevent fraudulent conveyances, insolvent laws, the recording act, the prohibition of usury, lien laws, regulations in relation to chattel mortgages, conditional sales and preferences by corporations and in general assignments, show in how many ways and in what varied forms the legislature may properly restrain freedom of action in commercial transactions in order to promote the general welfare. Originally all parol contracts for the sale of personal property were valid and it was unnecessary to make delivery or payment wholly or in part. The recording act was unknown, and transfers in writing, whether absolute or conditional, did not have to be filed. Now, however, many statutes require business to be transacted in a certain way, and that constructive notice should be given in order to protect creditors and innocent purchasers. Such interference with liberty and such limitations upon the use of property, although arbitrary and inconvenient, have always been regarded as valid in order to prevent fraud and promote justice. While commerce is hampered to a limited extent in some ways, it is protected and promoted to a much greater extent in other ways. The inconvenience of the restraint is less than the evil done away with.

The statute now before us was passed for the same general purpose as the most of those mentioned. It is aimed at the same evil which is admitted to be both serious and common. It does not prohibit a sale of any kind, but it provides safeguards against secrecy, which is the bulwark of fraud. It simply requires that notice of what is to be done should be given in advance, personally or by mail, to those directly interested, who are frequently made the victims of fraudulent sales.

It regulates two kinds of sales: 1. A sale of any portion of a stock of merchandise other than in the ordinary course of trade in the regular and usual prosecution of the seller's business. 2. The sale of an entire stock of merchandise in bulk. We now have to deal with the latter only. Such a sale is declared fraudulent and void, not absolutely, but as against the creditors of the seller unless the statute is complied with. If the seller pays his debts the sale stands even if not made as required by the statute, but otherwise it falls unless at least five days before the date thereof both seller and purchaser unite in making a full and detailed inventory showing the quantity and, so far as reasonable diligence will permit, the cost price of each article. This burden is cast upon both seller and purchaser, but a further burden is placed on the purchaser, who is required, at least five days before the sale, in good faith, to make full and explicit

Digitized by Google

inquiry of the seller as to his creditors and the amount owing to each and to notify them personally or by mail of the proposed sale, the cost price of the stock to be sold and the price proposed to be paid. At least five days before the sale the seller is commanded to file, where is not specified, but presumptively in the office where a chattel mortgage given by him should be filed, a truthful answer in writing to each inquiry made of him by the purchaser as above required. Except as thus specified the rules of evidence and the presumptions of law are left unchanged.

A recent amendment provides that a sale "will be presumed to be fraudulent and void as against the creditors of the seller" unless the statute is complied with, while the act governing the case now before us makes such a sale absolutely void as to creditors. L. 1904, ch. 569.

The statute is confined to merchants and dealers, as is apparent from the use of the expressions "a stock of merchandise" and "the "cost price to the seller." No sale is forbidden, but certain sales are regulated in order to prevent fraud. No restraint is placed upon sales made in the ordinary course of business, whether at wholesale or retail, for the statute applies only to unusual and extraordinary sales. There is no attempt to regulate sales generally, but merely those which experience shows are so frequently made a cover for fraud. There is no interference with the ordinary business of merchants, but when they sell their entire stock and go out of business, or sell any substantial portion thereof in an irregular and unusual way, notice to creditors is required so that they can protect themselves against fraud. No protection is afforded to strangers, but simply to those who have a strong equitable right to see that the sale is for a fair price and free from fraud. If the merchant pays his debts there can be no attack upon the sale, however made. The act is less drastic than one imposing a lien upon goods sold until the purchase price is paid, with the right to discharge the lien by sales in the ordinary course of business, which is clearly within the power of the legislature. The requirement of notice is less burdensome than the imposition of a lien.

While the statute in question disturbs freedom of contract, so does fixing the price of elevating grain (People, etc., v. Budd, 117 N. Y. 1; Munn v. Illinois, 94 U. S. 113), the prohibition of options to buy or sell grain at a future time (Booth v. Illinois, 184 U. S. 425), and the annulment of all contracts for the sale of corporate stocks for future delivery, or on margin. Otis v. Parker, 187 U. S. 604. It interferes with the use of property, but so does a limitation upon the height of buildings (People ex rel. Kemp v. D'Oench, 111 N. Y. 359); the requirement that tenement houses shall be furnished with water (Health Dept. of N. Y. v. Rector, etc., Trinity Church, 145 N. Y. 32); forbidding the sale of stamped bottles (People, etc., v. Cannon, 139 N. Y. 32); or of lottery tickets issued in a State where lotteries are lawful (People, etc., v. Noelke, 94 N. Y. 137); or of game purchased in another State as lawful merchandise and brought into this State. People, etc., v. Bootman, 180 N. Y. 1. It interferes with liberty, but so does the act "to regulate barbering on Sunday" (People, etc., v. Havnor, 149 N. Y. 195; Petit v. Minnesota, 177 U. S. 164); the statute making it a misdemeanor to exhibit a child as a dancer in order to earn a living (People, etc., v. Ewer, 141 N. Y. 129); the exclusion of children not vaccinated from school (Matter of Viemeister, 179 N. Y. 235), and the compulsory vaccination of all the inhabitants of a community (Jacobson v. Massachusetts, 197 U. S. 358).

Twenty States, as well as the Federal government in the District of Columbia, have similar statutes, some with provisions more stringent than our own and all aimed at the suppression of an evil that is thus shown to be almost universal. California, Civil Code, sec. 3440, as amended March 10, 1903; Colorado, Laws 1903, chap. 110; Connecticut, Public Acts 1903, chap. 72; Delaware, Laws 1903, chap. 387; District of Columbia, U. S. Statutes at Large, chap. 1809; 58th Cong., April 28, 1904; Georgia, Laws 1903, No. 457; Idaho, Laws 1903, H. B. 18; Indiana, Acts 1903, chap. 153; Kentucky, Acts 1904, chap. 22; Louisiana, Acts 1896, No. 94; Maryland, Laws 1900, chap. 579; Massachusetts, Acts and Resolves 1903, chap. 415; Minnesota, General Laws 1899, chap. 291; Ohio, Laws 1902, H. B. 334; Oklahoma, Session Laws 1903, p. 249; Oregon, Billinger's Ann. Codes and Statutes, chap. 7; Tennessee, Acts 1901, chap. 133; Utah, Laws 1901, chap. 67; Virginia, Act approved January 2, 1904; Washington, Laws 1901, chap. 109; Wisconsin, Laws 1901, chap. 463.

A statute with the same object attained by a similar remedy has been held valid by the highest courts in Massachusetts, Connecticut, Tennessee, and Washington. J. P. Squires & Co. v. Tellier, 185 Mass. 18; Walp v. Mooar, 76 Conn. 515; Neas v. Borches, 109 Tenn. 398; McDaniels v. J. J. Connelly Shoe Co., 30 Wash. 549. An act declaring such sales presumptively fraudulent was assumed to be valid by the courts of last resort in Wisconsin and Maryland. Fisher v. Herrmann, 118 Wis. 424; Hart v. Roney, 93 Md. 432.

On the other hand, a statute with more exacting conditions was held unconstitutional in Ohio (Miller v. Crawford, 70 U. S. 207), and a similar act met the same fate in Utah, where a violation of the statute was made a crime. Block v. Swartz, 27 Utah, 387. The weight of authority, thus far announced, is in favor of the validity of such legislation. The general grounds upon which it has been sustained are well illustrated by the following extract from the opinion of the Supreme Court of Massachusetts: "A purchaser, to be safe, has only to see that the vendor's creditors are provided for. The vendor may sell freely, without regard to the statute, if he pays his debts. The legislature, when contemplating this legislation, had occasion to consider and balance against each other the general right of property owners to make contracts and dispose of their property, and the general right of creditors to be paid, and to have reasonable opportunities secured to them for the collection of their debts. That this is within a class of legislation for which there is constitutional authority is too plain for question. The object of it is like that of our numerous statutory provisions which authorize attachments on mesne process, and establish

Digitized by Google

courts with all the necessary machinery for the collection of debts. The statute requires of the vendor nothing that can not be done with reasonable effort. If he is unable or unwilling to pay his debts, it puts a substantial obstacle in his way when he wants to dispose of his stock of merchandise in bulk and to receive payment for himself. But, under such circumstances, the property in most cases ought not to be sold in bulk without first giving creditors an opportunity to consider what ought to be done with it." J. P. Squires & Co. v. Tellier, 185 Mass. 18, 20.

The question before us is one of power, not of policy. Courts may pass upon the power of the legislature, but not upon its policy. Statutes, whether wise or unwise, are equally binding upon us, provided no provision of either constitution is molested. According to the general rule, unless there is a plain conflict between a statute and the constitution, the statute stands, for every presumption is in its favor. The respect due to a coordinate branch of the government will not permit mere judicial doubt to undermine a statute, for there must be clear judicial conviction that it violates the constitution before the courts can set it aside. The legislature, with all the power of legislation there is, may pass any law upon any subject, unless it is expressly or impliedly forbidden by the supreme law of the State or of the United States. There is a power beneath the constitution, but not superior to it, unwritten, not fully defined, necessary, resting on the sovereignty of the State, which exists because the State can not exist without it, and which must be considered in connection with the constitution. That power, known as the police power, aims to promote the public welfare by compulsion and restraint, and it is under the exclusive control of the legislature. The executive department can exert it only as authorized by the legislature. The courts can neither exercise it nor prevent its exercise, but they can determine whether a statute is a constitutional use of the power. We can not overturn a statute because we do not like it, for our likes and dislikes affect us as citizens, not as judges. We greatly prefer the amended act to the original, because, although effective, it is not so harsh, but that has nothing to do with the validity of either.

Starting always with the presumption that the statute, although challenged, is valid, we study it in connection with the constitution to see whether there is such a conflict as to divest the legislature of jurisdiction. If purporting to be passed in the exercise of the police power, we endeavor to see, first, whether there was an evil to be remedied, and, second, whether the remedy prescribed is "calculated, intended, convenient, or appropriate" to suppress it and not designed to trespass upon personal rights "under the guise of a police regulation." If "the act has a fair, just, and reasonable relation to the general welfare," it may so regulate "the conduct of an individual and the use of property" as to "interfere to some extent with the freedom of the one and the enjoyment of the other." If it violates no express command of the constitution and tends "in a degree that is perceptible and clear towards the preservation of the lives, the health, the morals, or the welfare of the community, as those words have been used and construed in many cases heretofore decided," and is not passed "ostensibly in favor of the promotion of some such object, while really it is an evasion thereof and for a distinct and totally different purpose," it comes within the jurisdiction of the legislature and the courts are bound to sustain it. The police power can not be arbitrarily exercised so as to deprive the citizen of his liberty or property, "but a statute does not work such a deprivation in the constitutional sense, simply because it imposes burdens or abridges freedom of action, or regulates occupations, or subjects individuals or property to restraints in matters indifferent, except as they affect public interests or the rights of others. Legislation under the police power infringes the constitutional guaranty only when it is extended to subjects not within its scope and purview, as that power was defined and understood when the constitution was adopted."

Liberty under the constitution does not mean natural liberty, or the right to act as one pleases subject only to the laws of nature, for society can not exist on that basis. Constitutional liberty is the right to act without restraint upon person or property, except such as is necessary or expedient for the general advantage of the public. Matter of Jacobs, 98 N. Y. 98; People, &c., v. Marx, 99 N. Y. 377; People, &c., v. Arensberg, 105 N. Y. 123; People, &c., v. Gillson, 109 N. Y. 389; People, &c., v. Budd, 117 N. Y. 1; Health Dept. of N. Y. v. Rector, &c., Trinity Church, 145 N. Y. 32; Slaughter House Cases, 16 Wall. 36; Barbier v. Connolly, 113 U. S. 27; Gas Co. v. Light Co., 115 U. S. 650.

The legislation under consideration was intended to suppress a deep seated evil, common in sales of a certain kind. The existence of the evil is admitted, and the right of the legislature to provide a remedy is also admitted, but it is insisted that the remedy provided is so unreasonable that it violates the primary guaranties of the constitution. The same claim was made when a maximum price was fixed for doing a certain kind of work, but it was rejected, because the work was done in a business affected with a public interest. People, &c., v. Budd, supra. The same position was taken when one State absolutely prohibited sales on margin and another options to buy or sell at a future time, contracts which were previously valid, but both provisions were sustained by the Supreme Court of the United States, because they tended to prevent gambling. Booth v. Illinois, supra, and Otis v. Parker, supra. While many contracts of the kind prohibited were free from wrong, as so many were made for the purpose of gambling, all were swept away, the good and the bad alike. Is gambling a worse evil than fraud? Does it affect commerce more seriously? Is freedom of contract interfered with more by requiring notice of creditors before certain sales are made than by forbidding certain other sales altogether? The statute is intended to interfere only with those who buy and sell in bad faith toward the creditors of the vendor. It doubtless interferes with some who act in good faith, but so do the other statutes referred to. In order to prevent in-

Digitized by Google

justice and fraud, legislation for time out of mind has placed some restraint upon commercial transactions, and where the legislature has jurisdiction to act the method of suppressing the evil is wholly within its sound discretion.

The right to pass laws to prevent fraud being conceded, what principle is to guide us in drawing a line to separate the act before us from those considered in the cases cited? How can we delare this statute void and the others valid? It has no ulterior purpose. No attempt is made to protect some favored interest from injurious competition. Its object is not, as in the Gillson case, to interfere with a lawful business, but to prevent one man from keeping property which equitably belongs to others. It seeks to maintain justice, which is one of the leading features of the public welfare. The protection of creditors has always been a primary function in the administration of justice. Why should the constitution require courts to be maintained to punish fraud and yet deprive the legislature of power to prevent fraud by requiring notice to a class apt to be defrauded?

As it is known that dishonest merchants abuse freedom of contract by secretly selling out in such a way as to defeat the claims of creditors, may not the legislature surround the right with some safeguards, such as an inventory and notice thereof? When the end sought is within the domain of legislation and the form of the remedy proposed is fairly adapted to that end, the courts have no power to interfere. When jurisdiction exists, the details are within the exclusive control of the legislature. While a merchant, owing debts, has an absolute constitutional right to sell his stock of goods, he may properly be required to do something for the protection of his creditors, and what he shall do is for the legislature to prescribe. With power to act upon the subject it may pass a foolish statute or a wise one, and we can not overturn the one unless we can the other. It is only when there is a want of power to legislate that the courts can declare a statute void.

It is insisted, and the argument is not without force, that while the provisions of the act, so far as they relate to the vendor may be valid, the restraint upon the purchaser is so severe as to impinge on the right of liberty and property. What is required of the purchaser? To some extent he must look after the interests of creditors, if there are any. He must either see that they are paid or notify them in advance of what is to be sold, the price paid and to be paid, and must ask the seller who his creditors are. If there are no creditors the statute does not apply. If the inquiry, when carefully made, discloses no creditors and the purchaser knows of none, he may buy in safety without the inconvenience of inventory or notice. If there are creditors the risk is in proportion to the amount of their claims, and whether it is large or small, they have rights which need protection from a sale made in bad faith, and it is at such sales that the statute strikes. The purchaser may be buying property in which the seller has less real interest than his creditors, and it is reasonable to charge both seller and purchaser with the exercise of some care toward them in the interest of justice and the general welfare. The inconvenience to purchasers is an evil, as it hampers commerce to some extent, but the injury to commerce from fraudulent sales is a much greater evil, so that on the whole commerce is not harmed but helped. The legislature had the right to balance these evils and to promote the common good by trying to do away with the greater. The every-day business of the seller and buyer is not touched, for that is outsite of the statute, but when an extraordinary sale is made, such as can occur but few times in the life of a merchant, certain conditions and restraints are imposed, not to hamper business, but to prevent secret sales in bulk of property usually bought on credit and generally unpaid for when the sale is made. The remedy provided tends to furnish the protection needed by creditors without any interference whatever with ordinary business and without disturbing freedom of contract in the rare and irregular cases to which the act applies any more than was within the power of the legislature according to the principles laid down by repeated adjudications in this court and in the Supreme Court of the United States.

Purchasers who complain of the act as a violation of their constitutional rights are themselves protected by legislation equally drastic, for they could not purchase in safety were it not for the acts in relation to chattel mortgages and conditional sales. They might purchase and pay in good faith and yet have the property taken away from them under a lien they knew nothing about and which they could not discover. As the legislature passed these acts it can repeal them, and in that event purchasers, however careful, might not get a good title, while now, even with the act under consideration in full force, they can get a good title if they only take pains. They can not, therefore, consistently object to such a statute. They can not in fairness assert that interference with an unlimited right of contract is constitutional when it operates in their favor, but unconstitutional when it operates in favor of creditors and against themselves.

It is also claimed that an unreasonable burden is imposed upon a limited class of debtors for the benefit of a limited class consisting of their creditors. A statute which is uniform in its effect upon all persons to whom it applies is not invalid because it applies to a limited number. This act applies to all the people of the State who carry on a certain kind of business, which presents special temptations and opportunities for the commission of fraud. The classification is not arbitrary, but is founded on a "reasonable and just difference between the persons affected and all others." The difference is seen in the nature of a business conducted largely on credit, which, as shown by the records of our courts, furnishes peculiar facilities for the perpetration of a characteristic fraud. As was said by Mr. Justice Brewer in a late case: "It is within the undoubted power of the government to restrain some individuals from all contracts as well as all individuals from some contracts" (Frisbie v. U. S., 157 U. S. 160, 165), and by Mr. Justice Fields in an earlier case:

"Special burdens are often necessary for general benefits. . . . Regulations for these

Digitized by Google

purposes may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions" (Barbier v. Connolly, 113 U. S. 27, 31). "The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions or are held entitled to different privileges under the same conditions" (Soon Hing v. Crowley, 113 U. S. 703, 709). The constitution means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances." Missouri v. Lewis, 101 U. S. 22; Moore v. Missouri, 159 U. S. 673, 678.

I close my review by repeating as applicable generally to the case before us the words of the Supreme Court of the United States in a decision of great importance: "The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the Government has, in the employment of means to that end, is very large. While both its power and its discretion must be so exercised as not to impair the fundamental rights of life, liberty, and property . . . yet in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of public opinion or by means of the suffrage." Powell v. Penn, 127 U. S. 678, 685, citing Yick Wo v. Hopkins, 118 U. S. 370.

The judgment should be affirmed, with costs, and the question certified answered in the affirmative.

Cullen, Ch. J. (dissenting).—I concur entirely in the opinion of my brother Vann, but as the point has now been raised that the statute before us makes unlawful discrimination between sales of one kind of personal property and sales of other personal property, of sales by persons engaged in one character of business and those in another, and, therefore, violates the provision of the Federal Constitution guaranteeing equal protection of the laws, I desire to add a word.

Of course, absolutely arbitrary selection by the legislature in imposing a tax or in creating a crime can not be justified, and for this reason we refused to uphold the imposition of a transfer tax in the Pell case. 171 N. Y. 48. But if there be difference in circumstance which bears some reasonable relation to the classification made by a statute, then that statute must be upheld, however greatly we may doubt its wisdom. Ever since we adopted the Law of Merchant there has been a difference in the title acquired by a bona fide purchaser to different kinds of personal property. The purchaser of a watch or of a bond and mortgage must abide the title of his vendor, though he purchases in the best of good faith for a full consideration. But the purchaser of a railroad bond or a promissory note, if he acts in good faith, acquires title to the security, even though he buys it from a thief. The practical difference between the business of a merchant and that of a farmer is very apparent. A merchant obtains credit on the capital which he has in his business—that is to say, the excess in value of his stock in trade over his debts. He can not secure his creditors by a mortgage on his goods, for a chattel mortgage on a fluctuating stock is void as against the purchaser, and to uphold such a mortgage would destroy the very object for which the goods are sold to him, to wit, for sale to his customers. The case of a farmer is radically different. His capital is principally represented by his land, his stock, his implements, which are the subject of mortgage or lien, and any credit extended to him is accorded far more to his fixed capital than to his expected crops. It is unnecessary, however, to pursue the discussion.

Every business man will appreciate a score of distinctions between the way business is carried on by the one class and by the other. The doctrine contended for, that legislation must be exactly uniform, would be fatal to a large part of the statutory law of this State, which has never been challenged, and under which the community has lived for many years. Take as a single example the transfer tax law. Religious corporations are exempt from the tax, other charitable corporations not, as we have held; but more than that, a legacy or devise to a bishop is exempt, but there is no exemption in favor of any other clergyman or clerical. Our law abounds in similar distinctions, many of which we may think without justification, but the power of the legislature to make those distinctions has not been challenged. Without continuing the argument, however, it seems to me that the recent action of this court in the race course gambling case is conclusive. We have twice upheld, by a unanimous court, the validity of legislation which makes pool selling on horse races outside of the track a felony, punishable by imprisonment in State's prison for not more than two years, while the same act, if committed on the race grounds, is not a crime at all, but subjects the offender only to repayment of the money he has received on the bet. Be the distinction little or great between the conduct of business by merchants engaged in selling goods and that carried on by other owners of personal property, who, to use the judicial expression of the day, will have the temerity to deny that such difference is infinitely greater than that which obtains, either in moral obliquity or in injury to the community, between selling pools inside the fence which surrounds a race track and selling pools outside that fence?

Gray and Bartlett, JJ., concur with Werner and Haight, JJ.; Cullen, Ch. J. (in memorandum), and O'Brien, J., concur with Vann, J.

Judgment reversed, etc.

A minor child is held, in Roller v. Roller (Wash.), 68 L. R. A. 893, to have no right of action against her father to recover damages for rape committed by him upon her.

Digitized by Google

Court of Appeals of the District of Columbia.

STEPHEN U. G. JOHNSON, APPELLANT, v. THE UNITED STATES.

PERJURY; FALSE STATEMENT IN APPLICATION FOR CIVIL SERVICE EXAMINATION.

1. The clause of the second section of the Civil Service act of January 16, 1883, requiring that "every application for examination shall contain among other things a statement under oath setting forth his or her actual bona fide residence," etc., is not to be construed as requiring a sworn statement as to the residence of the applicant only, but applies as well to other matters considered relevant and proper by the Civil Service Commission with the approval of the President.
2. A false statement by the applicant in his application for examination to the effect that he had not before been employed in the Government service, is perjury, within the meaning of sec. 5392 R. S., and punishable as provided therein.

No. 1541. Decided October, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of perjury. Affirmed.

Mr. J. S. Easby-Smith for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, Stephen U. G. Johnson, has been adjudged guilty in the Supreme Court of the District of the crime of perjury and sentenced to imprisonment in jail for the period of eleven months and twenty-nine days.

The indictment charged that, desiring an appointment as letter carrier in the post-office of the city of Washington, the said Johnson, as required by law and the regulations of the Civil Service Commission, made an application to said commission for examination and entry upon the list of persons eligible for appointment to said position; that upon the form of application so required he wrote his answers to certain questions propounded therein and subscribed the same and made oath to the truth of his said answers before one Joseph R. Fague, a notary public for the District of Columbia; that a material fact to be disclosed in said application was whether the applicant had ever been employed in the civil service of the Government of the United States, and separated therefrom, and if so, whether he had resigned or been discharged therefrom; that to the questions whether the applicant had been separated from the Government civil service, and whether he had resigned or had been discharged, he answered "no;" that said statement was knowingly and wilfully false, because the applicant had, in fact, been in the Government civil service, and had been separated therefrom through discharge. A demurrer to the indictment was overruled and the same was tried before a jury, resulting in a verdict of guilty. The defendant then filed a motion in arrest of judgment on the following grounds:

1. That the indictment does not charge an offense under the laws of the United States. 2. That the indictment charges a violation of a pretended rule of the Civil Service Commission and not a law of the United States. 3. That there is no rule of the Civil Service Commission promulgated by the President of the United States which required the defendant to answer the particular questions set out in the indictment. This motion was overruled, and from the judgment entered on the verdict, and imposing sentence, the defendant has prosecuted this appeal.

It is well settled, as contended on behalf of the applicant, that a power conferred upon executive officers to make regulations in aid of the execution of a law, or for the better administration of affairs committed to them, does not extend to making a violation of one of those regulations a criminal offense. But the indictment did not charge the appellant with the offense of violating one of the civil service regulations relating to applications, but the commission of the offense of perjury in violation of section 5392 R. S., which reads as follows:

"Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, or certificate is true, wilfully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished," etc. . . .

The perjury charged consisted in wilfully making a false answer under oath to one of the questions propounded in the application required by the civil service regulations. If there existed the power to make a regulation specifying the form of questions to be answered by the applicant, and to require oath to be made thereto, then the oath, when administered by an officer lawfully empowered, became an oath authorized by law, and any material statement falsely made became punishable as perjury under said section. U. S. v. Bailey, 9 Pet. 238; Caha v. U. S., 152 U. S. 211, 218; In re Kollock, 165 U. S. 526, 533.

The final contention is, that by a clause of the second section of the civil service act of January 16, 1883, the power to make a regulation requiring a sworn statement in an application is expressly limited to that relating to the residence of the applicant, wherefore the oath made to the statement set out in the indictment was not only not authorized by law, but was in plain excess of its provisions. If this contention were sound the conclusion would necessarily follow that the indictment is without foundation. Morrill v. Jones, 106 U. S. 466. But we can not accept this view of the meaning of the act. The clause referred to provides that "Every application for an examination shall contain among other things a statement under oath setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place."

An avowed purpose of the civil service act was to provide a fair apportionment of appointments to positions in the departments at the capital among the several States according to their population, and to effectuate this it was of prime importance that the residence of each applicant should be truly stated. This being a simple requirement of general application to all cases the Congress did not leave it to the

Digitized by Google

discretion of those charged with the execution of the law. As it was apparent, however, that further detailed information would be requisite to enable them to fully and fairly perform the duties entrusted to them—information that would necessarily vary in its scope in respect of the many different qualifications required of applicants for distinct branches of Government service—the power to make inquiries relating thereto was almost of necessity left to their discretion. These were embraced in the "other things" mentioned in the clause aforesaid. It is true that the clause may not be happily constructed so as to show this intention with absolute certainty, but we think it clear that it must be interpreted as if, by transposition of words, it had been written as follows: Every application for an examination shall contain a statement, under oath, among other things setting forth his or her actual bona fide residence, etc. So read, the act itself required oath to be made not only to the inquiry in regard to residence, but also to others that might be considered relevant and proper by the civil service commission with the approval of the President. This conclusion renders it unnecessary to consider the particular effect of the general authority to make regulations conferred by another clause of the same section.

The oath having been authorized by law there can be no doubt of the power of a notary public of the District of Columbia to administer it under the provisions of section 986, R. S. D. C., then in force. It is proper to say that the objection to the ihdictment on this last ground was practically abandoned on the argument.

There was no error in overruling the motion and entering judgment upon the verdict. The judgment must be affirmed, and it is so ordered.

Affirmed.

An Act to Prevent Fraudulent Sale of Merchandise in the District of Columbia.

EDITOR WASHINGTON LAW REPORTER:

In view of your editorial in this week's issue, and the case of Wright v. Hart in the Court of Appeals of New York reported by you (Vol. 33, Wash. Law Rep. pp. 657 and 658), permit me to offer the following brief note of a case in this District and some other suggestions, together with some other cases, as being of interest. But in the first place, I would call attention to an able paper on the subject by Milton Strasburger, Esq., of the local bar (Vol. 32, Wash. Law Rep. 584).

The case referred to is that of Washington Tobacco Co. v. Mount et al., tried before a justice of the peace and now pending upon appeal in the Supreme Court of the District. The justice filed a written opinion too long to be reproduced, but in which three interesting points were developed. The suit was begun with an attachment on the ground that the defendant had fraudulently disposed of her goods to hinder and delay her creditors. The traversing affidavit set up the defendant's solvency and ability to pay her debts, and admitted the sale but failed to state that she had complied with the act of April 28, 1904 (33 Stats. at Large, 555), the so-called "sale of merchandise in bulk act," which provides that every person who shall bargain for or purchase any stock of goods in bulk shall demand and receive from the vendor at least five days before such purchase a written statement under oath containing the names and addresses of all the vendor's creditors, together with the amount due them, and it shall be the duty of the vendor to furnish such statement five days before such sale. That after having received from the vendor the statement mentioned, the *vendor*, at least five days before the sale, shall in good faith notify personally or by "wire" or by registered letter each of the creditors; and if these provisions are not complied with the sale as to all creditors of the vendor shall be *conclusively presumed* fraudulent and void.

It may be of interest to note that the word *vendor*, in the provision requiring notice to be given to creditors, and which is printed above in italics, should be vendee, and that while a court might construe it as reading vendee, if read as printed it is meaningless. The justice, to satisfy himself that it was not a misprint, obtained a certified copy of the act from the State Department, which shows the error to have been in the original act as signed by the President.

Two questions were made before the justice: First, the constitutionality of the act was attacked; and, second, its applicability to a case like the one under consideration was denied.

The justice said as to the first point: "This being an inferior court, I shall not take upon myself the office of declaring an act of Congress unconstitutional. It is enough to say that similar statutes have been upheld in many jurisdictions; and while the matter is not free from doubt, I do not feel justified in declaring the statute void." But the justice intimated a strong desire to have that question determined by a court of last resort. On the second point, the justice held that the mere sale of goods in bulk being conclusively presumed to be fraudulent, an attachment would lie unless the statute was complied with.

Final judgment having been rendered in the case, it was appealed, and it is hoped may reach the Court of Appeals. Messrs. Wolf & Rosenberg and Lloyd T. Everett appeared for the plaintiff and Messrs. Leckie, Fulton & Cox represented the defendant.

The following cases were developed by the researches of these industrious counsel and are believed to be practically all the cases on the subject:

In Block v. Schwartz, 65 L. R. A., 308 Utah, an act similar to ours held unconstitutional.

In McDaniels v. Connelly, 60 L. R. A., 947, Washington, the law was held constitutional. It was also held constitutional in the following cases: Neas v. Borches, 71 S. W. Rep., Tenn. 50; Squire v. Tellier, 69 N. E. Rep., Mass. 312.

In Fisher v. Herrman, 95 N. W. Rep. Wis. 392, the decision was against the creditor because the statute only provided for a presumption of fraud, not a conclusive presumption of fraud, and the presumption was rebutted. The same state of facts occurred in Hart v. Rooney, 93 Md. 432, and Boyd, J., lays great stress on the fact that the statute raised only a rebuttable and not a conclusive presumption of fraud.

Digitized by Google

Our statute raises a conclusive presumption, and apart from the cumbrous machinery of the law and the many difficulties of administering it, pointed out in the case of Wright v. Hart, supra, the New York Court of Appeals considered the statute objectionable on account of this conclusive presumption.

The writer is informed that one or two other justices of the peace have declined to consider the constitutional question, and that one of the justices of the Supreme Court of the District of Columbia has intimated an opinion that the law is constitutional.

The question is one of great interest and importance and should be speedily put beyond the realm of controversy.

A MEMBER OF THE BAR.

October 24, 1905.

The Bankruptcy Law.

[New York Law Journal.]

At a recent meeting of the American Bar Association there was submitted and adopted a unanimous report of the committee on Commercial Law disapproving the bill now pending before Congress for the repeal of the national Bankruptcy Law. In our opinion the action so taken is in harmony with a great preponderance of sentiment of the bar of this country. No one claims that the present act is perfect either in theory or detail; few are sanguine enough to suppose that any act could be framed that would not be open to some criticism and objection. There is, however, a very substantial concurrence in the view that the act was vastly improved by the amendments of 1903; that the situation is far better than to have no national law at all and that the existing act may be still further improved by amendment. Our contemporary, Law Notes, has the following editorial note on the subject, in which we entirely concur:

"It must be remembered that the act of 1898 was not passed with the sole purpose of relieving unfortunate debtors from the burden of their debts. The other and more weighty end in view was the establishment of a uniform system for the distribution of the assets of failing debtors. And in this lies the principal argument in favor of a continuance of the present law. Trade is universal. In commerce, no State lines exist. Therefore, the laws distinctly applicable to trade relations should be uniform, as in the case of the law respecting negotiable paper. With forty-five or more States and territories, each having separate and widely different statutes upon the subject of insolvency and assignments for the benefit of creditors, business can not be carried on with any degree of certainty and confidence. The effect of such a confusion of laws, commonly noticeable, is the restriction of credit and a resultant depression in trade. By far the greater proportion of the business of the country is transacted upon a credit basis, and it has been claimed that a majority of all commercial ventures end in failure. Merchants realize these facts, and a natural reluctance to extend credit even under favorable conditions is greatly enhanced if there be any uncertainty as to the future administration and division of the assets of the debtor in case of failure.

"Such uncertainty is bound to exist when the subject of bankruptcy is regulated solely by State enactments, which in some cases are extremely partial to the debtor. On the contrary, under a national bankruptcy law, these conditions of doubt and uncertainty do not exist. The creditor knows exactly what to expect if his debtor comes to grief, no matter in what commonwealth the latter may be located, and may extend credit as freely as he desires with supreme confidence in his ultimate equality with other creditors before the law. The mere statement of these propositions is a sufficient demonstration of a virtue in the national bankruptcy law far outweighing any objection which has been raised against it. The law should remain permanently in the Federal statute book."

It is to be hoped that members of the bar throughout the Union will bring the weight of their collective influence in favor of defeating the pending bill for a repeal. The occasion also seems opportune for proposing a few amendments to the act which seem most immediately desirable.

1. In his opinion in the Matter of Gilroy and Bloomfield (N. Y. Law Journal, October 3, 1905), Judge Holt remarked that "it is a serious defect in the bankrupt law that it contains no adequate provisions for criminal punishment for the fraudulent concealment of property in contemplation of bankruptcy." The criminal offenses created by section 29, in its present form, are very limited in their scope and apply substantially only to acts committed after the filing of the petition. Under the English Debtor's Act of 1869, which is employed in aid of the bankruptcy law, a long list of acts or omissions of a bankrupt constituting crime is given, many of which comprise acts committed within four months before the commencement of the bankruptcy proceedings. There is no good reason why the application of our own Bankruptcy Act should not be similarly extended, nor, as far as we can see, why those who abet and connive at fraudulent bankruptcy, in the capacity of alleged creditors or otherwise, should not also be expressly charged with criminal liability.

2. There is no good reason why corporations should not be permitted to file voluntary petitions in bankruptcy, nor is there any satisfactory ground for the present distinction between the different kinds of corporations against which involuntary petitions may be filed. Under the law of 1867, any business, moneyed, or commercial corporation might become an involuntary bankrupt. It would probably be well to exempt from the operation of the bankruptcy act banks, insurance companies, and any other public or quasi-public companies that are accountable to or under the supervision of a public department or bureau. As to all forms of merely business corporations the law should be uniform.

3. It might be well to amplify the scope of section 14b withholding the discharge of a bankrupt if he has "obtained property on credit from any person upon materially false statements in writing made to such person for the

Digitized by Google

purpose of obtaining such property on credit," by making it sufficient to deny a discharge if the bankrupt has obtained credit upon any false statement in writing (so as beyond doubt to comprise statements made to commercial agencies), and, also—specifically placing the burden of proof on him—if he fails satisfactorily to explain any difference in his financial condition between the time when he made the statement and the time when it appears he is insolvent.

4. It might also be well to further extend the concurrent jurisdiction of the Federal courts with the State courts in order that they may be open to the trustee for the collection of ordinary claims or debts and to suits against the trustee. See Collier on Bankruptcy, 5th ed., pp. 266-267.

Payment—Receipt—Duress.

In Earle v. Berry, decided by the Supreme Court of Rhode Island, in May, 1905, 61 Atl. 671, it was held that a mere threat to withhold payment of a debt, except on the giving of a receipt that the amount paid was all that was due, is not duress. The court said in part:

The discrimination between duress and such inequitable conduct as is charged by the plaintiff in this case is clearly made by Cooley, J., in Hackley v. Headley, 45 Mich. 569, 8 N. W. 511, where it is held that "refusal, on demand, to pay a debt that is due, thereby forcing the creditor to receipt in full for only a partial payment, does not constitute duress if the debtor has done nothing unlawful to cause the financial embarrassment which compelled him to submit to the extortion."

The opinion cites and analyzes the following cases: Astley v. Reynolds, 2 Str. 915; Smith v. Bromley, Doug. 696; Ashmole v. Wainwright, 2 Q. B., 837; Harmony v. Bingham, 12 N. Y. 99, 62 Am. Dec. 142; Scholey v. Mumford, 60 N. Y. 498; Chase v. Dwinal, 7 Me, 134, 20 Am. Dec. 352; Shaw v. Woodcock, 7 B. & C. 73; Nelson v. Suddarth, 1 Hen. & M. 350; White v. Heylman, 34 Pa. 142; Sasportas v. Jennings, 1 Bay, 470; Collins v. Westbury, 2 Bay, 211, 1 Am. Dec. 643; Crawford v. Cato, 22 Ga. 594; Chandler v. Sanger, 114 Mass. 364, 19 Am. Rep. 367; Spaids v. Barrett, 57 Ill. 289, 11 Am. Rep. 10; Bates v. Ins. Co., 3 Johns. Cas. 238; Beckwith v. Frisbie, 32 Vt. 559; Adams v. Reeves, 68 N. C. 134, 12 Am. Rep. 627; Briggs v. Lewiston, 29 Me. 472; Grim v. School District, 57 Pa. 433, 98 Am. Dec. 237; First National Bank v. Watkins, 21 Mich. 483; Skeate v. Beale, 11 Ad. & El. 983; Preston v. Boston, 12 Pick. 14; Wilcox v. Howland, 23 pick. 167, and continues:

"Many other cases might be cited, but it is wholly unnecessary. We have examined all to which our attention has been directed, and none is more favorable to the plaintiff's case than those above referred to. Some of them are much less so," citing Atlee v. Backhouse, 3 M. & W. 633; Hall v. Shultz, 4 Johns, 240, 4 Am. Dec. 270; Silliman v. United States, 101 U. S. 465, 25 L. ed. 987, and sums up the the case as follows: "In what did the alleged duress consist in the present case? Merely in this: That the debtors refused to pay on demand a debt already due, though the plaintiff was in great need of the money, and might be financially ruined in case he failed to obtain it. It is not pretended that Hackley and Mr. Gordon had done anything to bring Headly to the condition which made this money so important to him at this very time, or that they were in any manner responsible for his pecuniary embarrassment, except as they failed to pay this demand. The duress, then, is to be found exclusively in their failure to meet promptly their pecuniary obligation.

But this, according to the plaintiff's claim, would have constituted no duress whatever if he had not happened to be in pecuniary straits, and the validity of negotiations, according to this claim, must be determined, not by the defendant's conduct, but by the plaintiff's necessities. The same contract which would be valid if made with a man easy in his circumstances becomes invalid when the contracting party is pressed with the necessity of immediately meeting his bank paper. But this would be a most dangerous as well as a most unequal doctrine, and, if accepted, no one could well know when he would be safe in dealing on the ordinary terms of negotiation with a party who professed to be in great need."

In Silliman v. United States, supra, the owners of certain barges which were employed by the quartermaster's department claimed that they were forced by duress of their property to sign new charter parties at a reduced rate, but the court held that neither the forcible retention of the barges nor the refusal to pay the compensation agreed upon constituted duress. Harlan, J., says: "They yielded to the threat or demand of the department, solely because they required, or supposed they required, money for the conduct of their business or to meet their pecuniary obligations to others. . . . We are aware of no authority in the text books or in the adjudged cases to justify us in holding that the last charter parties were executed under duress. There is present no element of duress in the legal acceptation of that word. The hardships of particular cases should not induce the courts to disregard the long-settled rules of law."

Advice of a public prosecutor that a statutory offense has been committed, based upon a fair and full disclosure of the facts, is held, in Cooper v. Flemming (Tenn.), 68 L. R. A. 849, to protect the prosecuting witness from an action for malicious prosecution, although it is based upon an erroneous construction of the statute.

The liability of a master for injuries caused by a brakeman who wantonly and wilfully kicks a trespasser from a moving car is sustained in Dixon v. Northern Pacific R. Co. (Wash.), 68 L. R. A. 895, unless entire absence of authority of brakemen to eject trespassers is shown.

The right to require a license to own, run, or manage a dental office, to be granted after examination as to fitness, is denied in State v. Brown (Wash.), 68 L. R. A. 889, where there is no intention of engaging in the actual practice of dentistry.

Digitized by Google

The right of a union depot company to grant to a transfer company the exclusive right to use a designated portion of its depot grounds for the purpose of standing thereon its hacks and vehicles, and of soliciting the patronage of incoming passengers, is sustained in State ex rel. Sheets v. Union Depot Co. (Ohio), 68 L. R. A. 792.

The right of an individual to challenge the corporate capacity of a foreign corporation as a defense to its right to recover is sustained in Myatt v. Ponca City Land & I. Co. (Okla.), 68 L. R. 810, where, in an action between him and the corporation, the latter attempts to acquire title to property vested in such individual.

An exception of a right of way, which will inure to the benefit of the heirs and assigns of the grantor, is held, in Dee v. King (Vt.), 68 L. R. A. 860, to be created by a clause in a deed of a strip of land "reserving the privilege of a pass . . . in my usual place of crossing," where the pass was used to reach other land of the grantor difficult of access by any other route.

That equity will refuse to impose a lien upon the property of a minor in favor of one who advances money at his request to redeem the property from a mortgage sale, is held in Burton v. Anthony (Or.), 68 L. R. A. 826, notwithstanding his agreement that the claim shall be secured by a lien on the property.

The right of a carriagemaker having in his possession a carriage belonging to a customer for repair and sale on the customer's account to insure the customer's interest therein by a policy taken in his own name is sustained in Johnston v. Charles Abresch Co. (Wis.), 68 L. R. A. 934.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

[Filed October 23, 1905, J. R. Young, Clerk.]

Carlisle & Johnson, Solicitors.

In the Supreme Court of the District of Columbia, Louis P. Shoemaker, Trustee, v. The Unknown Heirs, Alienees, and Devisees of John C. Roemele and William or William B. Smith. No. 25,621. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the west half of lot seven (7) in Samuel Davidson's recorded subdivision of lots in square one hundred and sixty-three (163), fronting fifteen (15) feet on the north side of K street northwest, by depth of one hundred (100) feet eleven (11) inches, in the city of Washington, District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant by his solicitors, Carlisle & Johnson, it is this 23d day of October, A. D., 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of John C. Roemele and William or William B. Smith cause their appearance to be entered herein on or before the first rule day occurring forty days after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in the Washington Law Reporter and the Washington Post at least once in the month of October and at least three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 42-3t

[Seal.]

John S. Alleman, Attorney

Supreme Court of the District of Columbia, Holding Probate Court.

Estate of Elizabeth C. Opperman, Deceased.

No. 13,221. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert F. Fox, it is ordered this 27th day October, A. D. 1905, that notice be and hereby is given to **Rachael A. Todd (nee Kulp), Hannah E. Coffee, and Hester R. Smith, of Doylestown, Pa.; Michal C. Kulp, of Lynchburg, Va.; Ida Dangler, of Atlantic City, N. J.; William C. Kuhn, of Philadelphia, Pa.**, and to all others concerned, to appear in said court on **Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-3t

[Seal]

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **LeRoy M. Taylor**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 14th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN & TRUST CO., Andrew Parker, Treasurer, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. —. Administration. [Seal.] 43-3t

John Lewis Johnson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ellen M. Kennedy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. WILLIAM A. FOY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,135. Administration. [Seal.] 43-3t

R. Ross Perry & Son, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James William Orme**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of October, 1905. WILLIAM B. ORME, 1623 28th st. N. W.; CHAS. B. BAILEY, 1424 Stoughton street. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,201. Administration. [Seal.] 43-3t

Oscar Luckett, Solicitor

In the Supreme Court of the District of Columbia.
James Hyde v. The Unknown Heirs, Alienees, and Devisees of Charles Carter.
No. 25,699. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to that parcel of land situated in the city of Washington, District of Columbia, known as and being lot numbered sixty-four (64) in A. D. Jessup's subdivision of lots in square numbered two hundred and eighteen (218), as per plat recorded in liber R. L. H., folio 236, of the records of the surveyor's office of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein, it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant, by his solicitor, Oscar Luckett, it is this 23d day of October, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Charles Carter**, cause their appearance to be entered herein on or before the first rule day occurring forty days next after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law Reporter at least once in the month of October and three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. oct 27-nov 3,10,17

Legal Notices.

George F. Collins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth A. Rawlings, Deceased.
No. 13,019. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by James S. Rawlings, it is ordered this 23d day of October, A. D. 1905, that notice be and hereby is given to the **unknown heirs and next of kin of said Elizabeth A. Rawlings, deceased**, and to all others concerned, to appear in said court on **Tuesday, the 28th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

C. C. Clarke, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Robert Duncan Swingle**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. EMMA C. SWINGLE, 1443 Huntington Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,231. Administration. [Seal.] 43-3t

E. H. Thomas and A. Leftwich Sinclair, Attorneys

In the Supreme Court of the District of Columbia.
Holding a District Court.
In the Matter of the Extension of M Street East of Bladensburg Road, in the District of Columbia. No. 649. District Court Docket, No. 2.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved March 3, 1905, entitled "An act for the extension of M street east of Bladensburg road, and for other purposes," have filed a petition in this court praying the condemnation of the land necessary for the extension of said M street east of Bladensburg road, in the District of Columbia, with a width of ninety feet, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition, and marked "Exhibit D. C. No. 1;" and praying also that a jury of seven (7) judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extension of said M street east of Bladensburg road and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is, by the court, this 19th day of October, A. D. 1905, ordered: That all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the **8th day of November, A. D. 1905, at 10 o'clock A. M.**, and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Evening Star, The Washington Times, and The Washington Post, newspapers published in said District, before the said 8th day of November, A. D. 1905. It is further ordered that a copy of this notice and order be served by the said marshal or his deputies upon such owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 8th day of November, A. D. 1905. By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 43-1t

Digitized by Google

Legal Notices

Blair & Thom, Solicitors
In the Supreme Court of the District of Columbia,
Holding a Special Term in Equity.
In the Matter of the Change of Name of Dallas Corbin, Otherwise Known as Henry Corbin.
Equity, No. 25,751.

Upon consideration of the petition of Dallas Corbin, commonly and generally known as Henry Corbin, this day filed, praying that his name be changed to Henry Corbin, it is, this 13th day of October, A. D. 1905, ordered that notice in said case, in accordance with section 1299 of the Code of Laws of the District of Columbia, be published in the newspapers as follows: On the 13th day of October, 1905, Dallas Corbin, commonly and generally known as Henry Corbin, filed his petition in this court, stating that he had assumed the name of Henry Corbin by mistake; that he had acquired real estate; conducted business as an expressman, and had been for many years generally known as Henry Corbin; and the prayer of said petition is as follows: That this honorable court will pass an order changing your petitioner's name from Dallas Corbin to Henry Corbin and make Henry Corbin his legal name for all intents and purposes. That said notice in said form shall be published once a week for three consecutive weeks in [Seal] The Washington Post. By the Court: THOS. H. ANDERSON, Justice. True copy. Attest: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 43-3t

William C. Prentiss, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Kunigunda Fedarwisch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of October, 1905. JOHN T. BRANSON, 614 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Administration. [Seal.] 43-3t

James F. Bundy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Allen B. Hamm, Deceased.
No. 13,209. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Bundy, it is ordered this 24th day of October, A. D. 1905, that notice be and hereby is given to **Mary Hamm**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Washington Matthews, Deceased.
No. 13,208. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Caroline Matthews, it is ordered this 24th day of October, A. D. 1905, that notice be and hereby is given to **Alphons Matthews, Clement Matthews, Nicholas Matthews, and Maria Matthews**, and to all others concerned, to appear in said court on **Monday, the 4th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted; provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said [Seal] return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

Legal Notices.

Maurice Kelly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Anna M. Rochester**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. WM. B. ROCHESTER, 1320 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. [Seal.] 43-3t

A. B. Keefer, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alice Healy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. DENNIS L. HEALEY, 1154 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,104. Administration. [Seal.] 43-3t

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 24 Defrees street, in the city of Washington, District of Columbia, being lot number seventy-six (76) in Shephard's recorded subdivision of square number six hundred and twenty-three (623), to Christian Loos, for the sum of two thousand ($2,000) dollars cash, less fifty ($50.00) dollars brokerage commission, it is by the court this 20th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **20th day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 43-3t

E. L. Gies, Solicitor
In the Supreme Court of the District of Columbia.
Howard F. Sorg, Complainant, v. Ollie A. Sorg et al., Defendants. Equity No. 25,295.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 19th day of October, A. D. 1905, ordered that the defendant, **Ollie A. Sorg**, cause her appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three (3) consecutive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 43-3t

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of October, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Boyd Taylor, Asst. Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,144. Administration. [Seal.] 43-3t

Digitized by Google

Legal Notices.

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles F. Scott**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. MARTHA SCOTT, 1455 Binney st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,188. Administration. [Seal.] 42-3t

---

Ellwood P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Myers, Deceased.
No. 13,210. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellwood P. Morey, executor, it is ordered this 26th day of October, A. D. 1905, that notice be and hereby is given to **Herbert P. Myers, Fannie Hitch, Edward H. Myers, Mary M. Reynolds, Wellborn M. Reynolds, Herbert L. Reynolds, Dudley W. Reynolds, Homer V. Reynolds, Edward H. Reynolds, James M. Walker, Mary C. Walker, William M. Walker, Daniel McI. Walker,** and to all others concerned, to appear in said court on **Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 42-3t

---

SECOND INSERTION.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Edward J. Adams, Jr.**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. WILLIAM F. ADAMS, 821 C. st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,192. Administration. [Seal.] 42-3t

---

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Annie E. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **17th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of October, 1905. RICHARD HARRISON JOHNSON, 709 C st. S. W.; WILLIAM A. WIMSATT, 215 8th st. S. W. Attest: WM. C TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,216. Adm. [Seal.] 42-3t

Legal Notices.

Joseph H. Stewart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term of Probate Court.
In re Estate of Milly Cook, deceased.
No. 12,477.

This cause coming on to be heard upon the petition of Robert W. Brown, executor herein, reporting the sale of lot five (5) in A. H. Lee's recorded subdivision of lots numbered C and D in Elizabeth Morrison's subdivision of square numbered two hundred and eighty (280) to William A. Hedrick for the sum of eight hundred and thirty-five ($835.00) dollars, it is this 17th day of October, A. D. 1905, by the court ordered that said sale be ratified, unless cause to the contrary be shown on or before the 10th day of November, A. D. 1905; this order to be published once a week in the Washington Law Reporter for three successive weeks before said date. WENDELL P. STAFFORD, Justice. [Seal] A true copy. Attest: M. J. Griffith, Deputy Register of Wills. 42-3t

---

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Little C. Osman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Asst. Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,184. Administration. [Seal.] 42-3t

---

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Celia E. V. Beall, Deceased.
No 12,871. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Lizzie B. Gladman, it is ordered this 16th day of October, A. D. 1905, that notice be and hereby is given to **M. Elmer Carrier**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 42-3t

---

A. A. Birney and G. E. Tralles, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
John W. Butterfield, Complainant, v. William L. Jones, Receiver, and Eureka Insurance Company of Pittsburg, Pennsylvania, Defendants.
In Equity. No. 25,698.

The object of this suit is to establish and enforce an equitable lien in favor of the complainant upon a certain draft or warrant issued by the United States in settlement of the claim of the Eureka Insurance Company of Pittsburg, Pa., William L. Jones, receiver, for $5,000, which said sum has been appropriated by Congress to pay said claim, and for a receiver to take possession of said draft or warrant, and endorse and collect the same. On motion of the complainant, it is, this 20th day of October, A.D. 1905, ordered that the defendants, **William L. Jones and the Eureka Insurance Company of Pittsburg, Pa.**, a corporation, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three consecutive weeks before said return day in The Washington Law Reporter. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 42-3t

Digitized by Google

Legal Notices.

Isaac H. Ford, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alfred Ford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **20th day of September, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1906. JOHN FORD, 312 2d st. S. E.; MARY M. FORD. 312 2d st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,168. Adm. [Seal.] 42-3t

Thomas P. Woodward and Geo. R. Linkins, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William R. Woodward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **13th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1905. THOMAS P. WOODWARD, 507 E. st. N. W.; GEO. R. LINKINS, 507 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,175. Administration. [Seal.] 42-3t

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notce That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta M. Martin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1905. BENJAMIN F. MARTIN, 617 L st N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,203. Administration. [Seal] 42-3

THIRD INSERTION.

Saml. Maddox, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas Culhane**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of October, A. D. 1 06**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of October, 1905. BRIDGET M. CULHANE, 921 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,199. Administration. [Seal.] 41-3t

Lyon & Lyon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louise Lansburgh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of October, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. GUSTAVE LANSBURG, 1018 Vt. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,211. Administration. [Seal.] 41-3t

Legal Notices.

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Irvin B. Wright**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. FRANK S. BRIGHT, 415 Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,195. Administration. 41-3t

Barnard & Johnson, Attorneys,

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Brison Norris**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **10th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. MARY E. NORRIS, 501 H. st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 41-3t

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Adolf Cluss**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1905. LILLIAN C. DAW, 2301 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,179. Administration. [Seal.] 41-3t

Bernard P. Mimmack, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Catalina Juliana Mason Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10 day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1905. CASSIE MASON MYERS JULIAN-JAMES, 1602 20th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,185. Administration. [Seal.] 41-3t

J. J. Waters, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Stanley Pearce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of October, 1905. GEORGE PIMPER, 3245 M st. N. W.; HENRY F. KUNKEL, 806 20th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,062. Administration. [Seal.] 41-3t

Digitized by Google

Legal Notices.

Albert E. Shoemaker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Richard Edwards, Deceased.
No. 13,213. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said deceased, by Susan Edwards, it is ordered, this 12th day of October, A. D. 1905, that notice be and hereby is given to **Sarah Wilkins, Alice Minor, and Garrit S. Edwards**, and to all others concerned, to appear in said court on **Wednesday, the 15th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice.
[Seal]
Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 41-3t

E. H. Thomas

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 48 and 52 Q street northeast, in the county of Washington, District of Columbia, being lots numbered one hundred and five (105) and one hundred and seven (107) in Francis A. Blundon's subdivision of lots in square numbered three, "West Eckington," as per plat recorded in liber county No. 11, folio 29, of the records of the office of the surveyor of the District of Columbia, to Charles L. Selecman for the sum of seventy-five hundred ($7,500) dollars cash, less three (3%) per cent brokerage commission, it is by the court, this 6th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **6th day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy.
[Seal]
Attest: James Tanner, Register of Wills. 41-3t

Mason N. Richardson, Solicitor

In the Supreme Court of the District of Columbia,
Ira T. Bryant et al. v. Jerome A. Johnson et al.
No. 24,729. Equity Docket No.—

The object of this suit is to subject lot 36, sq. 194, in the District of Columbia, to the claim of complainants as judgment creditors, and to divest defendants of all title and interest thereof. A copy of this order to be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks prior to the return day hereto. On motion of the complainant, it is this 10th day of October, A. D. 1905, ordered that the defendant, **Robert H. Bundy**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 41-3t
[Seal]

George F. Graham, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Columbus J. Eslin**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 8th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 9th day of October, 1905. BENJ. J. ESLIN, GEO. F. GRAHAM, by Geo. F. Graham, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,505. Administration. [Seal.] 41-3t

Legal Notices.

SIXTH INSERTION.

[Filed September 18, 1905.]

A. Leftwich Sinclair, Attorney for the District of Columbia

In the Supreme Court of the District of Columbia,
Holding a Special Term as a District Court of the United States for the District of Columbia.
In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia. No. 671. District Court Docket, No. 2.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at **2 o'clock p. m. on the 31st day of October, A. D. 1905**, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony in the matter of the damages resulting from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: "L" street northeast, between First and Third streets; Florida avenue northeast, between Second and Fifth streets; "N" street northeast, between First and North Capitol streets; the minor street and the alleys in square numbered seven hundred and forty-eight (748); and the alleys in square numbered seven hundred and forty-nine (749), and Second street, "K" street, and "L" street, surrounding the said square. Section 8 of the aforesaid act of Congress, approved April 22, 1904, provides "that the owner of any real property, damaged by the said change of grade, shall have the right within sixty (60) days after the date fixed for the meeting of said commission to file a petition with said commission, which shall be signed and sworn to, for an allowance of damages; and upon the failure of any such owner to thus present his claim within said period, his said right shall cease and determine." CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. YOUNG, Clerk, by J. W. Latimer, Asst. Clerk. 33-6t
[Seal]

SEVENTH INSERTION.

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.
Gilbert J. Osterman et al. v. Robert E. Poole et al.
No. 25,518. Equity.

The object of this suit is to perfect complainants' title to sublots 108 to 114, inclusive, square 104, Washington, D. C. On motion of the complainants, it is, this 10th day of August, A. D. 1905, ordered that the defendants, **Robert E. Poole, Susan Erwin, and Ann Council**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the **unknown heirs, devisees, and alienees of Martin Casmer, of Martin Kershnor, of Margaret Freeman, of Charles W. Goldsborough, and of Charles Henry Goldsborough**, cause their appearance to be entered herein on or before the rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the month following the first publication of this order, and twice a month for the two succeeding months, in The Washington Law Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clk.
au 11,18,25; sept. 8,22; oct. 13,27

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 44

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - NOVEMBER 3, 1905

CONTENTS.

Editorial 689
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
District of Columbia, plaintiff in error, v. Percy T. Lewis 691
SUPREME COURT OF THE DISTRICT OF COLUMBIA:
Memorial Evangelical Lutheran Church, complainant, v. Northwestern National Insurance Company, defendant 692
Legal Notices 699

Memorial Meeting of the Bar.

The meeting of the bar of the District of Columbia, held on Friday afternoon, October 27, 1905, to pay tribute to the memory of Mr. William J. Miller and Mr. Andrew B. Duvall, was largely attended. Mr. Justice Gould presided and Mr. Charles W. Clagett acted as secretary. Resolutions in regard to the death of Mr. Miller were presented by Mr. Eugene Carusi in behalf of the committee, and addresses paying fitting tribute to his character as a man and lawyer were made by Mr. Carusi, Mr. Frank W. Hackett, Mr. T. Percy Myers, and Mr. Samuel R. Bond. The high regard entertained for Mr. Duvall by his brethren at the bar was beautifully expressed in the resolutions presented by Mr. R. Ross Perry, and in the addresses made by Mr. Perry, Mr. J. Holdsworth Gordon, and Mr. Edward H. Thomas, the last named speaking especially for those who had been associated with Mr. Duvall in his work as corporation counsel. We hope at an early day to give place in our columns to a full report of the proceedings at the meeting, including the resolutions and addresses.

An adjourned meeting will be held on Friday afternoon, November 3, to take action respecting the death of the late Justice Andrew Wylie.

Fraud and Deceit—Sales of Land—Caveat Emptor.

In the case of Judd v. Walker, decided by the St. Louis Court of Appeals and reported in the Central Law Journal for October 27, 1905, the court held that where a vendor of land deliberately and falsely represents a tract of land as containing 178 acres, when in fact it contained only 153 acres, the vendee may recover of the vendor the value of the acres sold in excess of those actually received, and the doctrine of caveat emptor is no defense, even though the vendee saw the land. The opinion of the court is, in part, as follows:

1. There are cases which hold that where the parties go upon the land during negotiations and the seller points out the true boundaries thereof to the purchaser with the statement of the number of acres contained therein, and upon this statement of the acreage the purchaser relies and purchases the land, no action of deceit can be maintained by the injured party on account thereof. The reason assigned in these cases seems to be twofold; first, that parties ought not to rely on such statements, and second, that the parties were upon the land and the means of information were equally open to both, therefore the rule caveat emptor applies, as the true number of acres could be ascertained by ordinary vigilance on the part of the purchaser. This doctrine is announced in the following cases: Gordon v. Parmalee, 2 Allen (Mass.), 212; Mooney v. Miller, 102 Mass. 217; Credle v. Swindell, 63 N. Car. 305.

The Kansas City Court of Appeals, in the case of Mires v. Summerville, 85 Mo. App. 183, followed the Massachusetts case of Gordon v. Parmalee, supra, and applied the same rule to the case there in decision. In that case as reported, however, it does not appear that the seller pointed out the true boundaries of the land, and this seems to be the principal fact upon which the judgments were predicated in the cases above cited. In fact, the Kansas City Court of Appeals, in the case mentioned, carried the doctrine of caveat emptor to its extreme limit if not beyond it, and we are confronted with their adjudications in the present controversy. After much careful and painstaking investigation, we are satisfied that the law is quite generally established throughout those jurisdictions where the common law obtains, to the effect that false statements and representations made by the vendor, positively as of his own knowledge as to the number of acres in a certain tract of land when the tract is being negotiated by the acre, are not regarded as expressions of opinion, but on the contrary are considered statements of fact, and as such constitute fraud. This is certainly the doctrine of our supreme court. McGhee v. Bell, 170 Mo. 121 (see, also, dissenting opinion, 170 Mo. 150–151); Buford v. Caldwell, 3 Mo. 335; Hitchcock v. Baughan, 44 Mo. App. 42; Brooking v. Shinn, 25 Mo. App. 277; Leicher v. Keeney, 98 Mo. App. 394; Starkweather v. Benjamin, 32 Mich. 305; Dunn v. White's Admr., 63 Mo. 181; Foster v. Kennedy, 38 Ala. 359; Beardsley v. Duntley, 69 N. Y. 577; Coon v. Atwell, 46 N. H. 510;

Digitized by Google

Whitney v. Allaire, 1 N. Y. 305; Clark v. Baird, 9 N. Y. 183; Weatherford v. Fishback, 4 Ill. 170; Griswold v. Gebbie, 126 Pa. St. 353; Hill v. Browser, 76 N. Car. 124.

This view has become almost universally recognized and adopted by the courts throughout the country. The generally accepted doctrine on the subject is thus announced in the 14 Amer. and Eng. Ency. of Law, 2d ed. 45: "Statements as to Boundaries and Acreage.—There are some cases in which it has been held or said that a false statement as to the boundaries of a tract of land, or as to the number of acres which it contains, will not support an action of deceit, but they base the rule on the ground that such statements ought not to be relied upon, and not on the ground that they are expressions of opinion. Statements as to such matters, if made by a person positively, and as of his own knowledge, are statements of fact, and have often been held to constitute fraud."

In fact, the rule announced above is the same which applies in cases of fraud and deceit generally and is to the effect that the party owning the property or article, is presumed to know the facts. No one has prevented him from knowing them and one dealing with him has the right to rely upon the positive statements and representations of fact pertaining thereto, even though the means of knowledge were specially open to him, provided the representations were relied upon and were sufficient to and did actually induce action, for the law will not hear the guilty party say, "You were yourself guilty of negligence;" or, "You ought not to have trusted me." Bigelow on Frauds, 523–524; Kerr on Frauds (2d ed.), 40–42; Cottrill v. Krum, 100 Mo. 397; Barker v. Scudder, 56 Mo. 272; Carter v. Black, 46 Mo. 384; Buford v. Caldwell, 3 Mo. 477; Smithers v. Bircher, 2 Mo. App. 499.

2. This case reeks with fraud. The evidence shows conclusively that Walker made positive representations to Bourland as to the number of acres in the tract from the inception of the trade up to the time of drawing the contract, at which time he suggested that as he was not sure of the exact number of acres in excess of ninety, they would call the irregular tract 90 acres in round numbers, leaving the impression that in the interim, prior to the making of the deed, he would ascertain the true acreage. Bourland relied upon what he said and trusted to him to make good his representations. Walker himself drew the deed for 178 acres, and procured his principal's signature thereto by giving to him an obligation of indemnity as mentioned, and collected the cash for the full number of acres as represented by him in the first instance, knowing at the time that he was then and there perpetrating a heinous fraud upon the purchaser. It would seem that in a case of such gross deception a recovery should be had without much difficulty. The respondent contends, however, that inasmuch as Bourland went upon the land twice and viewed the same, the parties were then upon an equal footing, and means of knowledge being open to him, the rule of caveat emptor applies; that it was the purchaser's duty to use his senses and vigilance and ascertain for himself the true facts, and not having done so, a recovery is precluded. The cases of Mires v. Summerville, Mooney v. Miller, Gordon v. Parmalee, and Credle v. Swindell, supra, are cited and relied upon as supporting this contention. Chancellor Kent says:

"The common law affords to every one reasonable protection against fraud in dealing, but it does not go to the romantic length of giving indemnity against the consequences of indolence and folly, or a careless indifference to the ordinary and accessible means of information. It reconciles the claims of convenience with the duties of good faith, to every extent compatible with the interests of commerce. This it does by requiring the purchaser to apply his attention to those particulars which may be supposed within the reach of his observation and judgment; and the vendor to communicate those particulars and defects which can not be supposed to be immediately within the reach of such attention. If the purchaser be wanting of attention to these points, where attention would have been sufficient to protect him from surprise or imposition, the maxim, caveat emptor, ought to apply." 2 Kent's Comm. (14th ed.), 484–485.

The true test of the application of the rule caveat emptor, is the liability of the defect complained of to the observation and judgment of one exercising ordinary and usual business attention, care, and circumspection; that is, such care and attention as is usually exercised by ordinarily prudent men in like business affairs. The law requires this much and no more. It does not require nor expect the purchaser to exercise a degree of care and prudence greater than business men ordinarily exercise in like transactions. The rule is a reasonable one and its chief purpose is to require men to see and know such things as are open and patent to their senses upon penalty. It is where the defect complained of is open and patent to the senses of one exercising ordinary business care and attention only that the rule of caveat emptor applies. 2 Kent's Comm. (14th ed.), 479–484; Weatherford v. Fishback, 4 Ill. 170; Starkweather v. Benjamin, 32 Mich. 305. The rule mentioned has been carried to its full extent in this State. Citing Morse v. Rathburn, 49 Mo. 91; McFarland v. Carver, 34 Mo. 195; Langdon v. Green, 49 Mo. 163.

Each of these cases, and in fact all of the well-considered cases, treat of the rule as one resting upon reason and applying only where the matters complained of were equally open to the senses of the parties and liable to discovery by the exercise of ordinary business capacity, and, in fact, it is said the principle is not applicable at all where there is a positive misrepresentation of a fact essential and material to the subject in question, and proper diligence has been used by the purchaser in the course of the transaction, and proper diligence is only such diligence as is usually employed by prudent men in like affairs. Kerr on Frauds (2d ed.), 42, 14 Amer. and Eng. Ency. Law (2d ed.), 119. On the other hand, in Stebbins v. Eddie, 4 Mason, 414 and 420, Judge Story says: "Where the sale is fair and the parties are equally innocent, there is little of any hardship and much convenience in holding to the rule of caveat emptor." We might add here that the general doctrine laid down in the books as ele-

Digitized by Google

mentary is that the doctrine of notice and means of knowledge has no application where distinct "means of knowledge easily within reach" employed in some of the cases ought not to be construed to require the purchaser to seek out and employ a surveyor for the purpose of verifying a fact positively asserted by the seller.

A land owner is held, in Kansas City N. W. R Co. v. Schwake (Kan.), 68 L. R. A. 673, to have no right to recover damages for injury to lateral support of his property until the earth is so much disturbed that it slides or falls, since the actionable wrong for impairment to lateral support is not the excavation, but the act of allowing the land to fall. An elaborate note to this case reviews all the other authorities on liability for removal of lateral or subjacent support of land in its natural condition.

Failure to make payment for articles delivered under a contract for the manufacture of articles, during a series of years, to be delivered in instalments when ordered, and to be paid for as delivered, is held, in Ross Meehan Foundry Co. v. Royer Wheel Co. (Tenn.), 68 L. R. A. 829, to entitle the manufacturer to declare the contract rescinded, and decline to make further deliveries under it.

That a railroad company may be found negligent in running a heavy freight train up grade at double its schedule speed when no necessity is shown therefor, and where, by reason of dryness of the season, and heavy wind, and proximity of inflammable buildings, there is great danger of setting fire to buildings, is declared in Norfolk & W. R. Co. v. Fritts (Va.), 68 L. R. A. 864.

For the purpose of determining which clause of the statute of limitations is applicable, it is held, in Fowlkes v. Lea (Miss.), 68 L. R. A. 925, that a recital of the consideration in a conveyance of real estate creates a contract in writing, although the vendee makes no express promise to pay. The question of recital of money consideration in a deed as contractual is considered in a note to this case.

A statute defining the practice of medicine so as to include every method of treating disease when done for gain, and requiring practitioners to obtain a license from a board composed exclusively of doctors of medicine, is held, in Territory v. Newman (N. M.), 68 L. R. A. 783, not to be unconstitutional as class legislation.

The running of the statutes of limitations against a right of action by a corporation to recover fraudulent profits made by its promoters is held, in Pietsch v. Milbrath (Wis.), 68 L. R. A. 945, not to be prevented by the fact that they are in control of the corporation, so as to prevent anyone from obtaining knowledge of the facts.

Court of Appeals of the District of Columbia.

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,
v.
PERCY T. LEWIS.

POLICE REGULATIONS; DISCHARGE OF FIREARMS WITHIN CITY LIMITS.

1. Section 5 of the Police Regulations promulgated by the Commissioners of the District of Columbia, prohibiting the discharge of firearms within the city limits "without a special permit therefor from the major and superintendent of police," held valid.
2. A judgment of the Police Court quashing an information charging a violation of the regulation, on the ground of the invalidity of the regulation, reversed.

No. 1575. Decided October 17, 1905.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. E. H. Thomas and *Mr. James Francis Smith* for the plaintiff in error.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the defendant in error.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

An information in the Police Court charged the defendant in error, Percy T. Lewis, with the violation of section 5 of the Police Regulations, which prohibits the discharge of firearms, etc., in the city of Washington "without a special permit therefor from the major and superintendent of police." To review the judgment quashing the information, on the ground of the invalidity of the regulation, this writ of error has been allowed.

It is not seriously denied that the subject-matter of the prohibition of the discharge of firearms in the city is one reasonably within the police powers conferred upon the municipal authorities, but it is contended that that power was not reasonably and legally exercised in the regulation aforesaid. The objection to its validity is founded on the clause which gives the superintendent of police the power to permit the discharge of firearms upon application, without defining the conditions of his exercise of discretion. The contention is that the clause in question is not only an attempt to delegate legislative powers to the superintendent of police, but also to commit the entire matter to his arbitrary discretion.

We are of the opinion that the Police Court erred in sustaining the objections to the information. The regulation itself contains the prohibition and delegates no such authority to the superintendent of police. Apprehending that special conditions might arise which could not reasonably be anticipated and provided for, under which it would be reasonable and expedient to permit the discharge of firearms and other explosives, special power of permission thereof to meet such contingencies was delegated to the municipal agent whose particular duty it is to look after the public security. The general power of regulation and prohibition included the power to determine under what conditions the prohibited act might be permitted, and this power of permission was an administrative function delegated to the superintendent of police to effectuate the purpose of

Digitized by Google

the regulation. Davis v. Massachusetts, 167 U. S. 43, 48. In that case an ordinance of the city of Boston, which prohibited public speaking upon the common except by permission of the mayor, was upheld as a reasonable exercise of the public power conferred upon the municipality.

That the discretion committed to the superintendent of police in respect of granting permission to discharge firearms under certain conditions of necessity or expediency apparent to him, might, in instances, be arbitrarily exercised, does not render the regulation unreasonable and therefore invalid. Barnes v. D. C., 24 App. D. C. 459, 460.

It follows that the judgment must be reversed with costs and the cause remanded with direction to overrule the motion to quash the information and to proceed with the trial in a manner not inconsistent with this opinion.

Reversed.

Supreme Court of the District of Columbia.

MEMORIAL EVANGELICAL LUTHERAN CHURCH, COMPLAINANT,

v.

NORTHWESTERN NATIONAL INSURANCE COMPANY, DEFENDANT.

EQUITY; MISTAKE OF FACT; REFORMATION OF POLICY OF INSURANCE.

1. In all cases where a court of equity is asked to reform a written instrument because of a mistake of fact, it must appear that the mistake is mutual. A mistake on one side may be ground for rescinding but not for reforming a written agreement.
2. In a suit for the reformation of an agreement on the ground of mistake, before the relief prayed for can be granted the court must be satisfied by convincing evidence that a mistake has been made or an accident has occurred which has resulted in a written agreement different from that intended by the parties.
3. In a suit to reform a policy of fire insurance by striking therefrom a clause entitled "the reduced rate average clause" (which it appeared had been plainly stenciled on the face of the policy at the time it was delivered to the agent of the insured), and for the enforcement of the policy as thus reformed, upon the ground that this clause had been introduced into the policy by accident and mistake and contrary to the terms of the contract of insurance previously agreed upon, the answer of the defendant denied that the said clause had been inserted in the policy through mistake and accident. *Held*, upon a review of the evidence, that it failed to show that a mistake had been made, or that an accident occurred which resulted in an agreement different from that intended by the parties to it; and that the bill must be dismissed.

In Equity, No. 24,714. Decided October 24, 1905.

HEARING on a bill in equity to reform a policy of fire insurance. Bill dismissed.

Messrs. Ralston & Siddons for the complainant.

Messrs. Worthington, Heald & Frailey for the defendant.

Mr. Justice ANDERSON delivered the opinion of the Court:

This cause comes before the court on bill, answer, replication, and the testimony. The object of the bill is the reformation of the policy of fire insurance placed by the defendant company upon the church property of the complainant by striking therefrom a clause entitled "The Reduced Rate Average Clause," or what is commonly called the 80 per cent clause, and for the enforcement of the policy as thus reformed, upon the ground, as alleged in the bill, that this clause was introduced into the policy by accident and mistake and contrary to the terms of the contract of insurance previously agreed upon. The bill recites that on July 23, 1900, complainant, through its duly authorized agents, contracted with the defendant company for a policy of insurance on its said building, additions, etc., in the sum of $6,000 for a term of three years at a total premium of $30 to be paid and which was paid by the complainant to the defendant; that thereupon the defendant company issued to and delivered to the complainant its policy, a copy of which is set out in the bill. That on or about July 15, 1903, and shortly prior to the expiration of this policy, the complainant, being still the sole owner of this property and desiring to keep the same covered against loss by fire to the same extent and upon the same terms and conditions and for the same period of time, contracted with the defendant company to have said policy of insurance and all of its conditions continued in force for an additional period of three years from July 23, 1903 (the date of expiration of the former policy) to July 23, 1906; and that thereupon, on July 15, 1903, the defendant, "with the intent and design to carry into effect said contract of insurance," issued and delivered to the complainant the policy of insurance here in question and received from complainant the agreed premium of $30, a copy of which policy is annexed to the bill. It is further averred, in paragraph 6 of the bill, "that, although at the time of entering into its said agreement and contract with the defendant for the extension and renewal of said policy of insurance first hereinbefore set out, it was perfectly well understood by and between the agents of your complainant and the defendant that the said policy of insurance was to be kept in force upon the terms and conditions set out in said first-mentioned policy, yet nevertheless by accident and mistake, and without any new consideration to your complainant moving, there was inserted in said renewal policy a clause, commonly known as the 80 per cent clause, or the percentage coinsurance clause, the same being in the words following, to wit:

"'Reduced Rate Average Clause.—In consideration of the reduced rate at which this policy is written, it is expressly stipulated and made a condition of this contract that this company shall be liable for no greater proportion of any loss than the amount hereby insured bears to 80 per cent of the actual cash value of the property described herein at the time when such loss shall happen, nor for more than the proportion which this policy bears to the total insurance thereon; provided, however, that if the aggregate claim for any loss shall not exceed five (5) per cent of such actual cash value, no special inventory or appraisement of the undamaged property shall be required.

"'If this policy be divided into two or more items, the foregoing conditions shall apply to each item separately; or if two or more buildings

Digitized by Google

or their contents be included in a single item, the application of the provision as to special inventory or appraisement shall be limited to each building and its contents.'

"By reason of which clause, it is alleged, the liability of the defendant company, in the event that the complainant should suffer a loss by fire less than 80 per cent of the actual cash value of said property, would be greatly diminished, and the security and protection afforded the complainant under the said first mentioned policy, and the contract and agreement for the renewal thereof correspondingly decreased."

It is further set out in the bill that it was and is the custom of the company in renewing its policies to issue a new policy identical with the one expired, excepting as to dates, instead of renewal receipts, and, so knowing from its previous dealings with the defendant company, complainant, upon receiving said policy and knowing it to be merely a renewal of the previous one, "and relying upon the contract and agreement aforesaid, . . . did not examine said policy and did not discover the presence of the 80 per cent clause until demand for payment of loss, when its attention was called thereto by defendant;" and that thereupon complainant demanded of defendant that the policy be reformed so as to express the real contract between the parties, but such demand was then and still is refused by defendant. Then follows the averment that the complainant would not have placed said insurance with defendant company, nor accepted its said policy, if it had known of the presence of this 80 per cent clause. The eighth and last paragraph of the bill then sets out that on January 29, 1904, said property was damaged by fire to the extent of $16,195.84, as ascertained by an appraisement wherein the actual cash or sound value of the property insured was fixed at $75,000; that the whole insurance upon the property was $20,000, divided among five different companies, of which the defendant company had $6,000; that none of the policies, except that of the defendant, had the 80 per clause; that upon settlement of the loss, the proportion of the defendant company—when its said policy is reformed as sought by this bill—is 30 per cent of the total loss, or $4,858.75, but that the defendant insists that it is liable only for such proportion of said loss of $16,195.84 as $6,000, the amount of its policy, bears to 80 per cent of $75,000, the actual cash value of said property, as provided in said 80 per cent clause; in other words, that it recognizes a liability for but 10 per cent of said loss, to wit, $1,619.58[1] instead of 30 per cent, or $4,858.75, a difference of $3,239.17.

The answer of the defendant denies, first, that the complainant contracted with the defendant that it should have the policy of July 23, 1900, and the conditions, provisions, and limitations thereof, continued in force for an additional period of three years; second, it denies that at the time of the issuance of the policy of July, 1903, it was understood between the respective agents of the parties to this suit that said insurance was to be kept in force upon the terms and conditions set out in the policy of July 23, 1900, and that the policy of July, 1903, should be identical as to terms and conditions with the policy of July, 1900, and also that the "reduced rate average clause" was inserted in said policy by mistake and accident, but asserts that the same was so inserted with the knowledge and consent of the complainant before the premium therefor was paid. It further denies that any step was taken or act done by it to deceive the complainant as to the true meaning and effect of said policy, but, on the contrary, that it was particular to fully inform the complainant, through complainant's agents, of the exact conditions of said policy and especially as to the reduced rate average clause. The other allegations of the bill not inconsistent with these denials are admitted.

It will be observed from this statement of the case that the issue joined between the parties is a clearly defined question of fact, namely, was this reduced rate average clause inserted in the policy through mistake and accident? If it were so inserted, within the recognized meaning of these terms, then it is the plain duty of the court to reform the policy by eliminating therefrom this clause, and to enforce the policy as thus reformed; otherwise to refuse the relief prayed.

As has been frequently announced by the courts and text writers, the annulling or reforming of an executed transaction is an exercise of supreme judicial power, and should be exercised with great caution.

It is fundamental that—"In all cases where a court of equity is asked to reform a written instrument, because of a mistake of fact, it must appear that the mistake is mutual." Eaton on Equity, p. 275, par. 117. This is the inflexible rule by which this class of cases is governed. In such a case, that is, where the mistake is mutual, it is a well established rule in equity that relief will be granted. Story, in his Commentaries on Equity Jurisprudence, thus states the rule:

"Equity interferes in cases of written agreements where there has been an innocent omission, or insertion, of a material stipulation, contrary to the intention of both parties, and under a mutual mistake. To allow it to prevail in such a case would be to work a surprise, or fraud, upon both parties, and certainly upon the one who is the sufferer. . . . A court of equity would be of little value if it could suppress only positive frauds and leave mutual mistakes, innocently made, to work intolerable mischiefs, contrary to the intention of the parties." Vol. 1 (first ed.), sec. 155.

In Walden v. Skinner, 101 U. S. 577 et seq., cited in the brief of complainant's solicitor, the general doctrine is thus stated: "Decisions of undoubted authority hold that where an instrument that professes or is intended to carry into execution an agreement, which is in writing or parol, previously made between the parties, but which, by mistake of the draftsman, either as to fact or law, does not fulfill, or which violates, the manifest intention of the parties to the agreement, equity will correct the mistake so as to produce a conformity of the instrument to the agreement; the reason of the rule being that the execution of agreements fairly and legally made is one of the peculiar branches of equity jurisdiction, and if the instrument intended to execute the agreement be for any cause insufficient

Digitized by Google

for that purpose, the agreement remains as much unexecuted as if the party had refused altogether to comply with his agreement; and a court of equity will, in the exercise of its acknowledged jurisdiction, afford relief in the one case as well as in the other, by compelling the delinquent party to perform his undertaking according to the terms of it and the manifest intention of the parties."

Kerr, in his work on the Law of Fraud and Mistake, at p. 418, states the rule in plain and simple language, as follows:

"If parties enter into an agreement, but there is an error in the reduction of the agreement to writing, so that the instrument fails, through some mistake of the draftsman, either in matter of law or of fact, to represent the real agreements of the parties, a court of equity will correct and reform the instrument, so as to make it conformable to the real intent of the parties." Kerr on Fraud and Mistake, p. 418, and cases cited.

"The principle upon which the court acts in correcting instruments is, that the parties are to be placed in the same situation as they would have stood in if the error to be corrected had not been committed. When a deed as drawn goes beyond the instructions and the intention of the parties, it will be rectified." Kerr on Fraud and Mistake, p. 419, and cases cited.

"A person, however, who seeks to rectify an instrument, on the ground of mistake, must be able to prove not only that there has been a mistake, but must be able to show exactly and precisely the form into which the deed ought to be brought in order that it may be set right according to what was really intended, and must be able to establish, in the clearest and most satisfactory manner that the alleged intention of the parties to which he desires to make it conformable, continued concurrently in the minds of all parties down to its execution. The evidence must be such as to leave no fair and reasonable doubt upon the mind that the deed does not embody the final intention of the parties." Kerr on Fraud and Mistake, p. 421, and cases cited.

"There can be no rectification, if mistake be not mutual or common to all parties to the instrument, or if one of the parties knew of the mistake at the time he executed the deed. Rectification can only be had where both parties have executed an instrument under a common mistake and have done what neither of them intended. A mistake on one side may be ground for rescinding, but not for correcting or rectifying an agreement." Kerr on Fraud and Mistake, p. 422, and cases cited.

The case of Dulany v. Rogers, 50 Md. 533, is also instructive upon this general subject:

"It is incumbent, however, upon the party seeking to reform an instrument to show, by conclusive proof, that it does not embody the final intention of the parties. Courts will not rectify it unless it was executed under a common mistake, both parties having done that which neither of them intended. A mistake on one side may be ground for rescinding, but not for reforming a written agreement."

It was conceded upon the oral argument, as it very properly is also in the brief of complainant's solicitor subsequently submitted for the consideration of the court, that before the relief prayed for can be granted the court must be satisfied by convincing evidence that a mistake has been made or an accident has occurred which has resulted in a written agreement different from that intended by the parties. This necessarily follows from the fact that the court must assume, in the first instance, that this policy constitutes the very contract that both parties intended to make, and, in the absence of clear and convincing evidence to the contrary, this assumption stands.

The undisputed facts as established by the proof in this case are:

First. That prior to the issuance and delivery of this policy nothing was said between the parties as to its terms, and therefore the averment in the bill, which is denied by the answer, that on or about July 15, 1903, and prior to the issuance of the policy in question, it was agreed between the parties that it was to be identical in its terms and conditions with the former policy is not sustained.

Second. That the policy when delivered contained the 80 per cent clause, being conspicuously stenciled on the margin of its first page.

Third. That the policy was first left with Rev. Dr. Butler in July, during the absence of his son, who, upon his return to the city found it in his office, and who, in turn, handed it to Mr. Ramey, a member of the church and an insurance broker, who had charge of the other insurance business of the church, for the purpose of inspecting it so as to verify its date.

Fourth. That Ramey had the policy on his desk for about a month, in the meantime paying the premium therefor to the defendant company's agent Lynch, and then without examining it, except as to its date, again returning it to Dr. Butler, jr., who placed it in his safe, where it remained until after the fire, and he was unable to say whether he opened and looked at the policy before the fire or not.

In addition to this undisputed evidence, Mr. Yoder, an agent of the company, testified in substance that in July he took the policy to Rev. Dr. Butler, who told him that his son was the proper person to receive it, and that thereupon he left it with Dr. Butler, requesting him to deliver it to his son upon the latter's return to the city; that thereafter he called several times to see Dr. Butler, jr., concerning the policy, but did not find him in until some weeks after the policy was issued; that the doctor, who then had the policy in his possession, asked him if there was any change in the rate, and that thereupon he told him what the rate was and offered to explain the 80 per cent coinsurance clause, but the doctor excused himself because he was busy, and said he would refer the matter to Mr. Ramey, as he understood the insurance business and would attend to it for them; and that this ended the witness' connection with the matter, as he thereupon turned it over to Mr. Lynch, who was also an agent of the company.

Mr. Lynch testified that about a month after the policy was issued, namely, about August 15th, he called on Mr. Ramey, who then had the policy; that he explained to him not only the rate of insurance, but also this 80 per cent coinsurance clause, and that thereupon Mr.

Digitized by Google

Ramey paid him the $30 insurance premium, and thus the matter was closed.

Rev. Dr. Butler, called in rebuttal, says he has no recollection of Yoder's call or of any conversation with him. While this item of evidence is not very important, it would seem reasonable that it occurred from the fact that when Dr. Butler, jr., returned home he found the policy in his office, which would seem to indicate that it had reached there in the manner suggested by Yoder.

Dr. Butler, jr., who was also called in rebuttal, testified that he had no recollection of Yoder's visit or of the conversation detailed by him, although he says that he can neither affirm nor deny Yoder's statement. The fact that the doctor did turn over the policy to Ramey, who paid the premium to Lynch, tends to support Yoder's statement in this regard.

Mr. Ramey, the last witness called by the complainant, testified in rebuttal that Lynch did call upon him in regard to this insurance; that he (Ramey) had the policy in his possession at the time, and that he paid the premium of $30 to Lynch, but he denies that Lynch explained to him its provisions and says that he did not know what they were until after the fire; that although the policy was on his desk for nearly a month he never examined it except to verify its date.

This is, in substance, the whole of the testimony.

Recalling the measure of proof necessary to justify the court to interfere in a case of this kind as conceded by complainant's counsel, and as announced in the several authorities already quoted, that the court must be satisfied by convincing evidence that a mistake has been made or an accident has occurred which has resulted in a written agreement different from that intended by the parties to it, it seems clear to my mind that the evidence in this case falls far short of such measure. The court is not to be simply satisfied that a mistake has been made, but it must be satisfied that such mistake was mutual, and has resulted in the issuance of a policy different from that intended, not by the complainant only, but by the defendant company as well. Even conceding that the complainant did not intend to accept a policy containing this 80 per cent coinsurance clause, and did not in fact know that it contained such clause, still, if such intention and want of knowledge was not common to both parties to the instrument, no equitable relief by way of reformation or rectification can be granted, the law being that rectification can only be had where both parties have executed an instrument under a common mistake and have done what neither of them intended. Kerr on the Law of Fraud and Mistake, already cited. The only thing the court could do in that state of case would be to rescind the contract; but no such relief is asked for here, nor could it be, under the circumstances of this case, without wholly releasing the defendant company from all liability to the complainant except for the return of the premium.

I do not want to be understood as holding that the mere retention of the policy by the agents of the complainant, without examining its contents, would estop it, after a loss occurred, from claiming that the policy was not what the complainant expected or intended it to be. This proposition is contended for by defendant's solicitors, but the cases cited by them do not, in my judgment, support the proposition to which they were cited. In the Bostwick v. Mutual Life Ins. Co. case, 116 Wis. 392, the party who was held to be estopped not only retained the policy but also retained along with it a letter addressed to him explaining the very question which afterwards came to be the subject of the suit. And in the New York Life Ins. Co. v. Fletcher case, 117 U. S. 534, the United States Supreme Court simply held that a party who signed a written application without even reading it and who thereafter accepted and retained a policy issued upon the faith of it, and having a copy of the application itself annexed, which he did not even then read, was estopped from saying that he did not intend to make the statements set forth in the application. It is sufficient for the purposes of this case that, even admitting that the insertion in the policy of the 80 per cent coinsurance clause was a mistake so far as the complainant is concerned, there is an absolute failure of proof that such mistake was mutual, or, in other words, that the terms of the policy are not what the defendant intended. In the course of the oral argument it was urged upon the court by complainant's solicitor that, in the absence of notice from the defendant company to the complainant that this policy contained this 80 per cent coinsurance clause, the court had the right to assume, in the light of the previous dealings between the parties, that the insertion of this clause in the policy was the result of an accident or mistake on the part of the company. It seems clear to my mind that this point can not be seriously pressed. Even could it be assumed from such a state of facts that this complainant was mistaken as to what the policy was, it certainly could not also be assumed that the defendant did not intend to do that which it unequivocally did. It is well settled that, in the absence of fraud or misrepresentation, a contract can not be avoided on the ground that one of the parties failed to apply his mind to its contents. Eaton on Equity, page 268. But above and beyond all this stands the indisputable fact that this 80 per cent clause was conspicuously stenciled on the margin of the first page of this policy. So prominently does it appear that, on opening the policy, the first thing to arrest the eye is this stenciled clause. So plain and conspicuous is it that it puts at rest all suggestions of fraud or deceit, and indicates clearly that the company intended, and intended openly, to make it one of the conditions of the contract, and, in the absence of proof to the contrary, the court is bound to assume that such was its intention.

The bill will accordingly be dismissed.

A resulting trust enforceable in equity is held, in Avery v. Stewart (N. C.), 68 L. R. A. 776, to arise where one person, at another's request, takes the title to real estate under an express agreement to hold it for, and convey it to, the latter upon the repayment of the purchase money.

Digitized by Google

The Motorist and the Law.

[Justice of the Peace.]

With the use, and unfortunately in too many cases the abuse, of motor cars upon the highway, the public has now become so familiar as to regard automobilism as an essential factor in the social life of the twentieth century. Though a single decade has not yet elapsed since the running of motor cars upon the public roads, freed from the necessarily prohibitive restrictions imposed by the highway acts upon traction engines and other locomotives, was for the first time legalized by statute in Great Britain, it is almost trite to assert that the motor car has become a power in the land. Of the great forces of nature, steam, electricity, and the like, it is not possible with any degree of accuracy in thought or language to predicate either good or evil. So far as at present understood by man, and so far as they are controlled by modern science to the purposes of man, they are beneficent or detrimental in their results according as they are wisely and moderately used on the one hand, or on the other abused, whether through ignorance, recklessness, negligence, or malice. The ultimate utility of the motor car in the service of mankind as by degrees it advances towards mechanical perfection can not now be reasonably doubted. Its use in the form of motor omnibus by the masses as well as the classes is clearly within the province of the near future if, indeed, it be not already an accomplished fact.

Notwithstanding, however, that the advantages accruing to the community from the adoption of this new means of transit and traction are so obvious, the experience of the last nine years, and more especially of the last two or three years, has demonstrated beyond dispute that a vast amount of inconvenience, mischief, injury, and suffering may be, has been, and continues to be engendered by the motor car in reckless, careless, or ignorant hands. This receives only too frequent and unhappy illustration in the columns of the daily press. We would, however, emphasize the point, which a moment's consideration renders clear, that the undoubted existence of this inconvenience and suffering is by do means necessarily incidental to the use of mechanically propelled vehicles on the highways. On the contrary, the use of a higher degree of caution on the part of the motor driver would certainly obviate the majority of so-called accidents. A catastrophe involving damage to property, injury to limb, or loss of life can not, from a legal point of view, properly be regarded as an accident if it be due to the slightest negligence or breach of the duty of care on the part of the person in charge of a motor car, much less if it be due to his recklessness or rashness. Damage or injury under any such circumstances ought to, and in fact does, involve both civil and criminal liability.

The press, in recently drawing public attention to the dangers and risks incurred by persons using the highways in many districts owing to the heedless or reckless driving of motor cars, has done good service.

The alertness and, as has been suggested, undue vigilance of the police in instituting prosecutions against motorists, and the alleged alacrity of a certain section of the magisterial bench to secure convictions, and the consequent imposition of fines in cases of motor offenses, have received such ventilation and comment in some of the daily papers as to have raised an agitation among a portion of the public against motor cars as an institution and motorists as a class. To object thus to the use of a motor car, because if improperly used it is capable of becoming a thing of terror and an engine of destruction, is to assume an attitude as logical as that of one who should object to the use of guns or knives because they may become weapons of murder. A motor car, like a carriage and pair, is in itself harmless enough; but if the carriage be driven in a crowded thoroughfare at the utmost speed which can be got out of the two horses it becomes to all intents as dangerous a vehicle, and as much an instrument of terror, as a motor car would be when driven without any consideration or regard for the safety of the persons in the thoroughfare. The gravamen of the indictment against the motorist as a class is that a large proportion of the individuals composing that class habitually drive their motor cars, whether intentionally or inadvertently, with a total disregard for the safety or comfort of other persons using the road. That such an evil exists and that active means should be taken to secure its immediate diminution or suppression can not be denied. The proper adjustment of the respective rights of persons owning and traveling in motor cars and of persons lawfully using the highways and public roads is the serious problem calling for solution. These two sections of the public each have definite legal rights, though there seems to be as yet a very indefinite conception of the nature of such rights.

A higher degree of consideration, the cultivation of a more perfect altruism than at present exists among the generality of mankind, would afford the most complete solution of the difficulty, and would tend to a reconciliation of the reciprocal rights of the motorist and the public to a reasonable user of the highway and the duties of reasonable forbearance on each side. The inculcation of such desirable qualities, however, belongs to the region of ethics, and is unfortunately beyond the province of an act of Parliament. But though it is not possible for legislation to ordain consideration for others and a wise discretion, yet indirectly the result of appropriate legislation may be to promote to some extent the exercise of such qualities by reason of the penalties attaching to acts attibutable to their non-exercise.

Now that a royal commission has been appointed to inquire into, and suggest remedies for, some of the existing evils connected with the use of motor cars on the highways, it may be opportune to offer to our readers some few comments upon the present state of the law regulating such user. The recent decisions upon the subject have received discussion in our columns from time to time, and it is not proposed here to recapitulate or refer to them.

There appears to be a somewhat widespread impression among the uninitiated that the rights and duties of a motorist are purely the creation of statute. It is, of course, true that the construction of motor cars, their use upon the highway, and their registration for pur-

Digitized by Google

poses of identification have been regulated by statute and by regulations contained in orders issued by the local government board in pursuance of statutory authority. Particular requirements have been made, offenses created, and penalties imposed by legislation. Nevertheless in the main the impression is erroneous, and it must be clearly understood that the basis of the rights and duties of the motorist and the public with regard to the user of the highway is to be sought in principles of the common law and not in the provisions of any statute. Every individual member of the public has a legal right at common law to make a proper use of the highway as a pedestrian or with horses or vehicles for the purpose of quietly passing along the highway. On the other hand, he must not obstruct or in any way interfere with or imperil the safety of any other person in the lawful use of the highway. This, of course, must be taken as qualified by and subject to the rights vested in the local highway authorities for purposes of repair and otherwise. The right of each member of the public to the uninterrupted use of the highway has been prescribed by no statute. It is an inherent right, the existence and recognition of which is in all probability coeval with the existence of the highways themselves.

With respect to the vexed question of the speed limit of motor cars upon the public roads, we venture to affirm that if no statutory limits of speed had been imposed the rules of the common law, if effectively administered, would have afforded protection to the safety of the public. The rules of the common law, indeed, apply to motor cars as well as to every other mechanical contrivance which has yet been or which at any time in the future may be devised by the ingenuity and invention of man. Sir James Fitzjames Stephen, in his celebrated and authoritative Digest of the Criminal Law, has pointed out the imperative legal duty of using the necessary degree of care and caution in the performance of dangerous acts or in the use of things which are of a dangerous nature if used without such care and caution. Any, even the slightest, negligence or omission to take such a degree of care, if it causes injury to the person of another, involves criminal responsibility, and if it results in death amounts to manslaughter. The principles of the common law, especially when supplemented by the existing penal legislation as to driving to the danger of the public, would probably be found to insure as high a measure of security as any possible rules of statute law imposing any arbitrary limit of speed. Indeed, the necessity for and the advisability of the retention of the present speed limit for motor cars on the highway has recently been questioned in more than one quarter and has already become a matter for serious deliberation.

That a contract of sale of land in gross may be rescinded on the ground of a mutual and innocent mistake as to the quantity of land in the tract sold, resulting in a large excess or deficiency, no other ground for relief being shown, is denied in Newman v. Kay (W. Va.), 68 L. R. A. 908.

In the Matter of Clothes.

[New York Law Journal.]

We do not recall whether in "Sartor Resartus" the learned Herr Teufelsdrockh makes any reference to the matter of clothes worn by suitors in a court room—there are allusions to the official habilaments of judges and counsel. Two recent paragraphs, one in the Law Journal (London), and the other in the Westminster Gazette, bring up the subject as to parties themselves. The following note from the American Law Review for September-October, 1905 (39 Am. L. R., 770), collates such items:

Advice to the Plaintiff in a Breach of Promise Case in the Divorce Court, England, as to Dress. —In Provost v. Wood, the following letter was read: "The question of dress, to my mind, is most important. Go well dressed. You will not get much money if you do not let the court see that you have occasion to spend it. Do not go in colors, because if you appear to make a holiday of it you will get little sympathy. You are supposed to treat the event as one of the sad incidents of life. Black is not necessary. Deep black would, of course, be absurd. If you wear colors, let them be sober and unobtrusive. We must lunch together one day at the Troc. or somewhere. Will let you know."

"That letter," said Mr. Justice Darling, "was written from the common room of the Inner Temple, and I shall certainly consider whether I shall send it to the Benchers of the Inn after I have shown it to the president of the divorce court." Subsequently the learned judge said he observed, on looking at the law list, that the writer of the letter was at the time a student, and was called to the bar two years ago, otherwise he would have felt it his duty to take serious action.—The Law Journal.

The Westminster Gazette, commenting upon Mr. Justice Darling's strong comments, suggests that he can hardly have read Lord Brampton's Reminiscences. It was as Mr. Hawkins, Q. C., that the famous cross-examiner was consulted by a solicitor as to the costume his client—a pugilist charged with manslaughter—should wear at his trial. The future judge was diplomatic. "I advised, as was my duty," he records, "that he (the accused) should scrupulously regard the dignity of the bench, and show the greatest respect to the learned judge who presided; that he ought not to come in a disgraceful costume if he could help it, but appear as becomingly attired as possible." He adds: "I impressed upon the attorney that his client should abstain from any appearance of attempting to deceive the judge, but confess to having made the further suggestion that any costume other than that of the man when actually engaged in the fight might throw some difficulty in the way of a young and inexperienced country constable identifying him. The hint was taken. The prisoner turned up looking like a tame young curate. He was dressed completely in black, wore a long frock coat, and had his hair brushed carefully back, giving him quite a saintly appearance. The disguise had its effect on the jury, who found the prisoner 'not guilty.' What would Mr. Justice Darling say to this story, one wonders?"

With regard to the first of these episodes we confess that we are unable to perceive any

Digitized by Google

legitimate ground upon which Mr. Justice Darling might have sent the letter to the Benchers of the Inn, or taken any other serious action, even if its writer had been an admitted and experienced practitioner. The language of Polonius to Laertes—

> "Costly thy habit as thy purse can buy,
> But not expressed in fancy; rich, not gaudy,
> For the apparel oft proclaims the man"—

is generally recognized as conveying as important a lesson of worldly wisdom as any other portion of that famous piece of parental admonition. In ordinary business and social intercourse, especially in large cities where people are obliged so judge each other to a large extent by appearances, the factor of dress is always a material one. When a suitor goes before a jury who are utter strangers to him it is entirely proper for his counsel to see to it that he does not offend sensibilities or excite prejudices by the form of his costume. Indeed, a trial lawyer might be remiss in duty if he did not make some suggestion to correct extreme slovenliness in a man or a loud peroxide tendency in a woman. Of course a member of the bar should not be privy to the assumption of a disguise, but we can see no reason why he may not properly confer with his client as to the style of dress which would be apt to place him in the most favorable light for obtaining the relief he claims.

The advice of Mr. Hawkins, Q. C., falls under a different category. A member of the bar is not justified in conniving with his client in a deception of the court or jury as to a matter of fact. It appears that in reality this was the aim, and that it was successfully accomplished. For a party to a criminal prosecution to disguise himself so that he can not be identified does not differ in principle from the state of facts disclosed in the case of Corley v. N. Y. H. R. Co. (12 App. Div. 409). It was therein shown that on the trial of an action for personal injuries to a child in which a large verdict had been recovered, the plaintiff in going to and from the witness stand had held one foot bent and off the floor and had used crutches, and had been lifted and helped along by his father, but that, nevertheless, for more than two weeks before the trial the plaintiff had entirely discarded his crutches in the house where he lived with his mother's consent, and that immediately after the trial the plaintiff, although rigidly secluded within doors, was permitted to play upon the roof of such house and even to climb upon a rear fire escape. The appellate division concluded that a theatrical display had been deliberately planned and carried out, inevitably tending to deceive the jury as to the plaintiff's physical condition, and that a new trial should therefore be granted.

In the latter case the court took occasion to say that the counsel for plaintiff was innocent of any complicity in the artifice employed. It certainly would have been reprehensible professional conduct to have connived at it, and, as above intimated, the connivance of Mr. Hawkins in his client's make-up for his trial, while not so bad in degree, was not very different in kind.

Buy your legal blanks from the Law Reporter Printing Company.

Ownership of Property in Case of Robbery.

The common-law definition of robbery as the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear, leaves open the question whether the person from whom the property is taken must be the owner of it.

On the part of the defendant, it has often been claimed in such cases that the offense was not committed because the property was taken from someone other than the owner. In State v. Montgomery, 181 Mo. 19, 67 L. R. A. 343, 79 S. W. Rep. 693, the robbery of a clerk by compelling him to take money from a cash drawer was held to sustain a conviction, though the clerk had no personal interest in the money.

This case is clearly sustained by the authorities on the subject, which have been reviewed in the annotation of the case in 67 L. R. A. 343. The contention to the contrary is clearly one of those technicalities of strict construction which have sometimes found lodgment in the criminal law. To sustain it would be manifestly against the reason of the law, and constitute an obstruction to justice.

In some cases it has been held that the interest of the person robbed must be such as would entitle him to maintain an action for the property if taken out of his custody, but these cases, which were decided in Missouri, are overruled by the Montgomery case, and it seems to be now universally true that the ownership of the property by the person robbed is not an an essential element in the crime.—Case and Comment.

Humor of the Law.

Chister: "That case will prove a gilt-edged proposition."

Eckitty: "Of course with 'u' in it."

"But," said the lawyer, "your case seems hopeless. I don't see what I can do for you. You admit that you beat your wife."

"Yes," replied the defendant, "but my wife's testimony will discount that. She'd never admit that she was beaten.

"Mr. Attorney," said the judge, after sending the defendant to jail for six months, "how does it happen that this man was only fined in the court below?"

"Your Honor," he replied with dignity, "I was not his counsel in the lower court."

And, somehow, the other lawyers present seemed to feel that he had explained it.

Judge Swarts, of Norristown, Pa., in a recent case laid down the law relating to mothers-in-law as follows: "It should be distinctly understood that the husband is master of his own house. The wife has no right to invite or admit her mother or anyone else to the house against her husband's will. The wife can, however, go to see her mother whenever she wishes, so long as she does not go so often as to neglect her duties to her husband and her home. That sounds very nice and ethical and all that, but it will hardly carry conviction when opposed to practical experience."

Digitized by Google

Even in the days when he was a struggling young lawyer Chauncey Depew was gifted with a considerable deal of the self-confidence which in later years came to be known by many men. One of the first cases he had in court involved a somewhat complicated question of inheritance. But he gayly tackled it and prepared what he regarded as an unanswerable argument. He had proceeded for some time when he noticed that the judge seemed to lose interest. Lawyer Depew hesitated and said, "I beg pardon, but I hope your honor follows me." The judge shifted in his chair as he replied, "I have so far, but I'll say frankly that if I thought I could find my way out I'd quit right here."

At Willow Springs, Mo., several years ago, two lawyers were engaged in the trial of a case before a justice of the peace who held court over a livery stable, Col. Watts on one side, and on the other one who was familiarly known as "Buffalo Bill" Jones. It is said that if the wit which was exchanged between these two in the trial of cases in that section was written up, it would make interesting reading. Suffice it for this occasion that while Col. Watts was engaged in his argument a jackass in a livery stable below struck up a loud and lively tune, drowning out Col. Watts' voice, who stopped in the midst of his argument till the music died out below, and then turning to Jones, in a very impressive manner, Col. Watts inquired: "Mr. Jones, did you speak?"

That it is not criminal for a labor union to publish a statement that a merchant is unfair, and that its members will not work material sold by him, for the purpose of inducing the public to refrain from purchasing material from him for fear of incurring the ill will of the union, is held in State v. VanPelt (N. C.), 68 L. R. A. 760.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,
LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

A Reputable Attorney experienced in law and practice wishes to join with him an active, energetic young member of the bar who has capital and would like to engage in a lucrative and promising general law business on very equitable terms. Only serious communications answered. Trifling and curious replies not considered. Address Ex. U. S. Attorney, P. O. Box 7, Station A, Washington, D. C. 44-1t

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Benjamin Carter, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Florence H. Smith,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. BENJ. CARTER, Bond Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,239. Administration. [Seal.] 44-3t

Douglass & Douglass, Solicitors
In the Supreme Court of the District of Columbia.
Samuel Rothert et al., Complainants, v. Susie Brice et al., Defendants.
Equity No. 25,457. Doc. 56.

Edgar B. Sherrill and John R. Shields, trustees, having reported to the court the sale of the real estate mentioned and described in the bill of complaint filed in the above entitled cause, being parts of original lots numbered 2 and 3 in square numbered 69, in the city of Washington, in the District of Columbia, beginning for the same at a point 5 feet east from the southwest corner of original lot numbered 2 in said square, and running thence north 100 feet; thence west 22 feet 6 inches; thence south 100 feet to the line of N street north, and thence east 22 feet 6 inches to the beginning; being the same land included in lot numbered 190, in said square numbered 69, according to a subdivision made by John H. Rothert, and recorded in book No. 28, page 126, in the office of the surveyor for the District of Columbia, to Albert Marshall for the sum of one thousand five hundred seventy-five dollars ($1,575), it is by the court, this 27th day of October, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **28th day of November, 1905.** Provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter.

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 44-3t

Blair & Thom, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Catherine McGuinn,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. HENRY P. BLAIR, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,191. Administration. [Seal.] 44-3t

Thos. Walker, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Johnson,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. WALTER G. BRADLEY, New York Mills, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,782. Administration. [Seal.] 44-3t

Digitized by Google

Legal Notices.

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Alienees of George Mason and Others. No. 25,700. Equity Docket No 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and alienees of **George Mason**, of **William Mason**, of **A. E. Grimes**, and of **Elizabeth Hooe**, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washing-
[Seal.] ton Law Reporter and in the Washington Times. By the court: THOS. H. ANDERSON, justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 3-10; dec 1-8; jan 5-12

Benjamin S. Minor and T. Percy Myers, Solicitors

In the Supreme Court of the District of Columbia,

Tillotson E. Brown et al. v. Charles W. Brown et al. In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 55 feet of lot 1, in square 397, with the improvements thereon, to Tillotson E. Brown for the sum of $9,750; lot 2, in square 556, with the improvements thereon, to Mary A. Martin, for the sum of $1,275; and sublot 70, in square 445, to Tillotson E. Brown, for the sum $1,124.12, it is, this 30th day of October, A. D. 1905, by the court, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the **30th day of November, 1905.** Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-3t

---

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adolphe Berger**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,228. Administration. [Seal.] 44-3t

---

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Nathaniel E. Thompson, otherwise known as Elbridge N. Thompson,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 20th day of November, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 2d day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer; by John B. Larner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,528. Adm. [Seal.] 44-3t

Legal Notices.

Ralston & Siddons, Solicitors.

In the Supreme Court of the District of Columbia.

Joseph H. Byram, S. Norris Thorn, Trustees of the Home Building Association, of the District of Columbia, v. The Unknown Heirs, Devisees, and Representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, and Thomas Barclay, George Barclay, and Anthony Barclay. Equity No. 25,653.

Process having been duly issued against the defendants herein and returned "Not to be found," although diligent efforts have been made to find them, it is, this 23d day of October, A. D. 1905, ordered that the **unknown heirs, devisees, and representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, Thomas Barclay, George Barclay, and Anthony Barclay,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three weeks in The Washington Law Reporter and The Washington Post; otherwise this cause will be proceeded with as in case of default. The object of this suit is to establish of record the title in fee simple of the complainants to part of lot two hundred and nine (209) in square twelve hundred and fifty-nine (1259) in the city of Washington, District of Columbia, described as follows: Beginning for the same at the northwest corner thereof and running thence south 122 feet 3 inches to the south line of said lot; thence east 31 feet 1 inch; thence north 10 feet (the width of the alley hereinafter reserved); thence east 2 feet 2 inches; thence north 20 feet, more or less, to the south line of lot conveyed to Jared Nichols; thence west 25 feet; thence north 90 feet to line of West street, and thence west 8 feet 3 inches, more or less, to the place of beginning; with the right to use a 10-foot alley running along and over the south part of lots 209 and 210 to give an outlet on Montgomery street. THOS.
[Seal.] H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 44-3t

---

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

D. H. Roland Drury v. Minnie Fuller and Others. No. 25,650 Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are **Minnie Fuller** (if living), and the unknown heirs, devisees and alienees of **Minnie Fuller** (if deceased), of **Andrew Schoifield**, of **Robert Lockie**, of **Ruth Fuller**, of **Calhoun Clark**, and of **Sarah F. Fitzgerald.** On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Wash-
[Seal] ington Law Reporter and in The Washington Times. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 3-10-17; dec 1-8; jan 5-12

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Edwin S. Houston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of July, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN & TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,667. Administration. [Seal.] 44-3t

Digitized by Google

Legal Notices.

Jos. D. Sullivan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George H. Plant**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate Given under my hand this 1st day of November, 1905. ARTHUR G. PLANT, care of Traders National Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,249. Admn. [Seal.] 44-3t

SECOND INSERTION.

John Lewis Johnson, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ellen M. Kennedy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. WILLIAM A. FOY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,135. Administration. [Seal.] 43-3t

R. Ross Perry & Son, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James William Orme**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of October, 1905. WILLIAM B. ORME, 1623 28th st. N. W.; CHAS. B. BAILEY, 1424 Stoughton street. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,201. Administration. [Seal.] 43-3t

[Filed October 23, 1905, J. R. Young, Clerk.]

Carlisle & Johnson, Solicitors.

In the Supreme Court of the District of Columbia, Louis P. Shoemaker, Trustee, v. The Unknown Heirs, Alienees, and Devisees of John C. Roemele and William or William B. Smith. No. 25,621. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the west half of lot seven (7) in Samuel Davidson's recorded subdivision of lots in square one hundred and sixty-three (163), fronting fifteen (15) feet on the north side of K street northwest, by depth of one hundred (100) feet eleven (11) inches, in the city of Washington, District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant by his solicitors, Carlisle & Johnson, it is this 23d day of October, A. D., 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of John C. Roemele and William or William B. Smith** cause their appearance to be entered herein on or before the first rule day occurring forty days after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in the Washington Law Reporter and the Washington Post at least once in the month of October and at least three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 43-4t
[Seal.]

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **LeRoy M. Taylor**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 14th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN & TRUST CO., Andrew Parker, Treasurer, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. ——. Administration. [Seal.] 43-3t

Robert S. Hume and A. S. Worthington, Attorneys

In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In the Matter of the Estate of Ellen O'Brien, Deceased.
No. 10,958. Administration Doc. 29.

It appearing to the court that the notification as to trial of the issues in this case, relating to the validity of the paper writing dated the 10th day of June, A. D. 1902, purporting to be the last will and testament of Ellen O'Brien, deceased, has been returned as to John O'Brien, James V. O'Brien, Ann Fortune, and all unknown heirs at law, next of kin, alienees, and devisees of said Ellen O'Brien, deceased, "not to be found," it is thereupon by the court this 5th day of October, 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the **17th day of January, A. D. 1906**, and that the substance of the issues and the date fixed for the trial, as shown in the margin of this order, be published for three months, once a month during the said period in The Washington Law Reporter, twice a week for not less than four weeks and twice a month for the remainder of the said period in The Washington Post. WENDELL P. STAFFORD, Justice.

MARGIN:

This is to give notice to **John O'Brien, James V. O'Brien, Ann Fortune**, and all unknown heirs at law, next of kin, alienees, and devisees of **Ellen O'Brien**, deceased, that, whereas a certain paper writing, bearing date of the 10th day of June, 1902, has been presented for probate and record in this court as the last will and testament of Ellen O'Brien, deceased, and the validity thereof is contested by certain of the parties in interest, issues have been framed and set for trial by jury in this court on the **17th day of January, A. D. 1906**, presenting the questions whether the said Ellen O'Brien was, at the time of the execution of said paper writing, of sound and disposing mind and capable of making a valid deed or contract; whether said paper writing, or the execution thereof, was procured from her by undue influence, fraud, and circumvention. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.
[Seal]
oct. 6; nov. 3; dec. 1.

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Elizabeth C. Opperman, Deceased.
No. 13,221. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert F. Fox, it is ordered this 27th day October, A. D. 1905, that notice be and hereby is given to **Rachael A. Todd (nee Kulp), Hannah E. Caffee, and Hester R. Smith, of Doylestown, Pa.; Michal C. Kulp, of Lynchburg, Va.; Ida Dangler, of Atlantic City, N. J.; William C. Kuhn, of Philadelphia, Pa.**, and to all others concerned, to appear in said court on **Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t
[Seal]

Digitized by Google

Legal Notices

Blair & Thom, Solicitors
In the Supreme Court of the District of Columbia,
Holding a Special Term in Equity.
In the Matter of the Change of Name of Dallas Corbin, Otherwise Known as Henry Corbin.
Equity, No. 25,751.

Upon consideration of the petition of Dallas Corbin, commonly and generally known as Henry Corbin, this day filed, praying that his name be changed to Henry Corbin, it is, this 18th day of October, A. D. 1905, ordered that notice in said case, in accordance with section 1299 of the Code of Laws of the District of Columbia, be published in the newspapers as follows: On the 18th day of October, 1905, Dallas Corbin, commonly and generally known as Henry Corbin, filed his petition in this court, stating that he had assumed the name of Henry Corbin by mistake; that he had acquired real estate; conducted business as an expressman, and had been for many years generally known as Henry Corbin; and the prayer of said petition is as follows: That this honorable court will pass an order changing your petitioner's name from Dallas Corbin to Henry Corbin and make Henry Corbin his legal name for all intents and purposes. That said notice in said form shall be published once a week for three consecutive weeks in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. True copy. Attest: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. [Seal] 43-3t

---

William C. Prentiss, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Kunigunda Fedarwisch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of October, 1905. JOHN T. BRANSON, 614 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Administration. [Seal.] 43-3t

---

James F. Bundy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Allen B. Hamm, Deceased.
No. 13,209. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Bundy, it is ordered this 24th day of October, A. D. 1905, that notice be and hereby is given to **Mary Hamm**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

---

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Washington Matthews, Deceased.
No. 13,208. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Caroline Matthews, it is ordered this 21th day of October, A. D. 1905, that notice be and hereby is given to **Alphous Matthews, Clement Matthews, Nicholas Matthews, and Maria Matthews**, and to all others concerned, to appear in said court on **Monday, the 4th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted; provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

Legal Notices.

Maurice Kelly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Anna M. Rochester**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. WM. B. ROCHESTER, 1320 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. [Seal.] 43-3t

---

A. B. Keefer, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alice Healy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. DENNIS L. HEALEY, 1154 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,104. Administration. [Seal.] 43-3t

---

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 24 Defrees street, in the city of Washington, District of Columbia, being lot number seventy-six (76) in Shephard's recorded subdivision of square number six hundred and twenty-three (623), to Christian Loos, for the sum of two thousand ($2,000) dollars cash, less fifty ($50.00) dollars brokerage commission, it is by the court this 20th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **20th day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 43-3t

---

E. L. Gies, Solicitor
In the Supreme Court of the District of Columbia.
Howard F. Sorg, Complainant, v. Ollie A. Sorg et al., Defendants. Equity No. 25,295.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 19th day of October, A. D. 1905, ordered that the defendant, **Ollie A. Sorg**, cause her appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three (3) consecutive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 43-3t

---

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Boyd Taylor, Asst. Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,144. Administration. [Seal.] 43-3t

Digitized by Google

Legal Notices.

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles F. Scott**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. MARTHA SCOTT, 1455 Binney st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,188. Administration. [Seal.] 43-3t

Oscar Luckett, Solicitor

In the Supreme Court of the District of Columbia.
James Hyde v. The Unknown Heirs, Alienees, and Devisees of Charles Carter.
No. 25,699. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to that parcel of land situated in the city of Washington, District of Columbia, known as and being lot numbered sixty-four (64) in A. D. Jessup's subdivision of lots in square numbered two hundred and eighteen (218), as per plat recorded in liber R. L. H., folio 236, of the records of the surveyor's office of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein, it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant, by his solicitor, Oscar Luckett, it is this 23d day of October, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Charles Carter**, cause their appearance to be entered herein on or before the first rule day occurring forty days next after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law Reporter at least once in the month of October and three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. oct 27-nov 3,10,17

George F. Collins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth A. Rawlings, Deceased.
No. 13,019. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by James S. Rawlings, it is ordered this 23d day of October, A. D. 1905, that notice be and hereby is given to **the unknown heirs and next of kin of said Elizabeth A. Rawlings, deceased**, and to all others concerned, to appear in said court on **Tuesday, the 28th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 43-3t

C. C. Clarke, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Robert Duncan Swingle**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. EMMA C. SWINGLE, 1443 Huntington Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,231. Administration. [Seal.] 43-3t

Legal Notices.

Ellwood P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Myers, Deceased.
No. 13,210. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellwood P. Morey, executor, it is ordered this 26th day of October, A. D. 1905, that notice be and hereby is given to **Herbert P. Myers, Fannie Hitch, Edward H. Myers, Mary M. Reynolds, Wellborn M. Reynolds, Herbert L. Reynolds, Dudley W. Reynolds, Homer V. Reynolds, Edward H. Reynolds, James M. Walker, Mary C. Walker, William M. Walker, Daniel McI. Walker**, and to all others concerned, to appear in said court on **Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 43-3t

THIRD INSERTION.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Edward J. Adams, Jr.**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. WILLIAM F. ADAMS, 321 C. st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,192. Administration. [Seal.] 42-3t

Joseph H. Stewart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term of Probate Court.
In re Estate of Milly Cook, deceased.
No. 12,477.

This cause coming on to be heard upon the petition of Robert W. Brown, executor herein, reporting the sale of lot five (5) in A. H. Lee's recorded subdivision of lots numbered C and D in Elizabeth Morrison's subdivision of square numbered two hundred and eighty (280) to William A. Hedrick for the sum of eight hundred and thirty-five ($835.00) dollars, it is this 17th day of October, A. D. 1905, by the court ordered that said sale be ratified, unless cause to the contrary be shown on or before the 10th day of November, A. D. 1905; this order to be published once a week in the Washington Law Reporter for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: M. J. Griffith, Deputy Register of Wills. [Seal] 42-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Celia E. V. Beall, Deceased.
No. 12,871. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Lizzie B. Gladman, it is ordered this 16th day of October, A. D. 1905, that notice be and hereby is given to **M. Elmer Carrier**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 42-3t

Digitized by Google

Legal Notices.

Isaac H. Ford, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Alfred Ford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **20th day of September, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1906. JOHN FORD, 312 2d st. S. E.; MARY M. FORD, 312 2d st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,163. Adm. [Seal.] 42-3t

Thomas P. Woodward and Geo. R. Linkins, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William R. Woodward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **13th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of October, 1905. THOMAS P. WOODWARD, 507 E st. N. W.; GEO. R. LINKINS, 507 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,175. Administration. [Seal.] 42-3t

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notce That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Augusta M. Martin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1905. BENJAMIN F. MARTIN, 617 L st N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,203. Administration. [Seal] 42-3

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Little C. Osmun**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Harry G. Meem, Asst. Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,181. Administration. [Seal.] 42-3t

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Annie E. Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **17th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of October, 1905. RICHARD HARRISON JOHNSON, 709 C st. S. W.; WILLIAM A. WIMSATT, 215 8th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,216. Adm. [Seal.] 42-3t

Legal Notices.

A. A. Birney and G. E. Tralles, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

John W. Butterfield, Complainant, v. William L. Jones, Receiver, and Eureka Insurance Company of Pittsburg, Pennsylvania, Defendants.
In Equity. No. 25,693.

The object of this suit is to establish and enforce an equitable lien in favor of the complainant upon a certain draft or warrant issued by the United States in settlement of the claim of the Eureka Insurance Company of Pittsburg, Pa., William L. Jones, receiver, for $5,000, which said sum has been appropriated by Congress to pay said claim, and for a receiver to take possession of said draft or warrant, and endorse and collect the same. On motion of the complainant, it is, this 20th day of October, A.D. 1905, ordered that the defendants, **William L. Jones and the Eureka Insurance Company of Pittsburg, Pa.**, a corporation, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three consecutive weeks before said return day in The Washington Law Reporter. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 42-3t

FOURTH INSERTION.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,298.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal]

sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 45

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - NOVEMBER 10, 1905

CONTENTS.

Editorial 705
In Memoriam—Andrew Brown Duvall 707
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Henry F. Iglehart and Mary D. Polk, appellants, v. J. Howard Iglehart, executor of the last will and testament of Annie I. Andrews, appellee... 711
Legal Notices 714

THIS WEEK'S DECISIONS OF THE COURT OF APPEALS.

Liens; Judgments and Decrees; Equitable Interests; Construction of Sections 1214 and 499, Code D. C.; Priority.

In Ohio National Bank v. Berlin, the appeal was from a decree of the court below dismissing a bill to subject the equitable interest of a judgment debtor to the lien of a judgment. The construction of two important sections of the Code of this District was involved. The plaintiff's judgment was recovered May 13, 1901, and it was contended by the plaintiff that the judgment became a lien upon the equitable estate of the judgment debtor by virtue of section 1214 of the Code, which went into effect from and after January 1, 1902. That section makes judgments at law and money decrees in equity liens upon equitable as well as legal interests of the judgment debtor; and it was contended that the lien thus given operated in favor of all judgments then in existence as well as those thereafter rendered. This contention is denied by the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, which holds that this provision of the Code has no retrospective operation, but is limited to future judgments.

Another question involved was as to the construction of section 499 of the Code, relating to the time when deeds take effect. The bill was filed May 13, 1902, and on May 26, 1902, there was filed for record in the office of the recorder of deeds an assignment by the judgment debtor to one Green of his interest in the property sought to be reached and subjected to satisfaction of the judgment. The court holds that by the filing of the bill the judgment creditor acquired a lien on the property which was superior to the right acquired by Green, whose assignment was recorded subsequently thereto.

Attachment and Garnishment; Trust Company; Questions as to Ownership of Safe Deposit Box.

In Washington Loan and Trust Company v. Susquehanna Coal Company, the appeal was from an order of the court below requiring the appellant, a trust company, as garnishee, to answer certain special interrogatories by which it was sought to ascertain whether it had in its safe deposit vaults a box in the name of a person other than defendant, but to whom it was alleged the defendant had fraudulently assigned his property. The Court of Appeals affirms the ruling of the trial court, holding that safe deposit companies were not exempt from the operation of the attachment statute, and was bound to answer the question. The opinion is by Mr. Justice McComas.

Benefit Societies; Failure to Pay Assessment; Reinstatement.

In Supreme Commandery United Order of Golden Cross v. Bernard, the appeal was from a judgment in an action on a benefit certificate issued by the appellant. It appeared that the member failed to pay an assessment, and thereby became disconnected from the order, but with the right of reinstatement within thirty days after such disconnection upon payment of the assessment and a fine. Before such payment, however, the member died. The court holds, in an opinion by Mr. Justice Duell, that this right of reinstatement on payment of the assessment and fine within the thirty days was personal to the member, and did not survive to his legal representatives. It therefore reverses the judgment of the court below in favor of the plaintiff.

Libel; Damages for Mental Suffering; Evidence.

In Washington Times Company v. Downey, the appeal was from a judgment for the plaintiff in an action for libel. It was objected by the appellant that no recovery could be had for mental suffering, but the court denies this contention, holding that such suffering, shown to be the natural and direct result of the publication

Digitized by Google

of the libel, constitutes an element of recoverable damage. The trial court also admitted evidence by the plaintiff to the effect that she had no parents living, and was dependent upon her own exertions; and this was urged by the appellant as error. The ruling of the trial court is, however, affirmed by the Court of Appeals, in an opinion by Mr. Chief Justice Shepard.

Opening of Minor Street; Assessment for Benefits.

In Brandenburg v. District of Columbia, the appeal called in question the validity of the proceedings by which Newport Place, in this city, was opened as a minor street, on the grounds of the unconstitutionality of the act of Congress under which the proceedings were had, and of irregularity in the proceedings. The court, in an opinion by Mr. Justice Duell, holds the act in question to be constitutional, and that the proceedings were substantially regular.

In Martin v. District of Columbia, the same questions were involved, and also the additional question whether the appellant, as holder of a note secured by deed of trust of the property involved in the Brandenburg case, was entitled to notice of the proceedings which resulted in the taking of part of the property and the assessment of benefits against the residue. It appeared that he had become holder of the note while the proceedings were pending. The court, in an opinion by Mr. Justice Duell, holds that he was not entitled to such notice.

Seventy-third Rule; Affidavit of Defense.

In Dobbins v. Thomas, the appeal was from a judgment for plaintiff rendered under the 73d Rule. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment, holding that the affidavit of defense was sufficient to entitle defendant to a trial of the issues in regular cause. Another contention of the appellant was that, being a married woman at the time of the alleged contract, which was that of an exchange of houses and their contents, she could not be held liable thereon. The court denies this contention, holding that the contract alleged was one clearly within the power of the defendant, though a married woman, to make, and must be deemed to have been made with reference to her separate estate, no contrary intent being expressed.

Bonds, Action On; Principal and Surety; Set-off; Sufficiency of Pleas.

In McGuire v. Gerstley, the trial court sustained a demurrer to the defendants' pleas, and the defendants electing to stand upon their pleas, entered judgment for plaintiffs. The action was on a bond given by two of the defendants as partners, with the other defendants as sureties thereon. The pleas of the defendants, which were principally by way of set-off or recoupment, are held by the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, to be substantially defective, and the judgment of the trial court is affirmed.

In Clark v. Gerstley, the appeal was from a judgment for plaintiff against one of the sureties on the same bond, entered after a demurrer to defendant's pleas had been sustained. One plea filed by this defendant claimed a discharge of the liability of the sureties by a failure of plaintiffs to give notice of default in payment by the principals, and by an extension of the time of payment. This plea is likewise held substantially defective, in an opinion by Mr. Chief Justice Shepard.

Wills; Bequest to Cemetery Company.

In Iglehart v. Iglehart, the suit was to construe a will by the provisions of which a devise or bequest was made to a cemetery company chartered by another State, and which by its charter was given the right to take such devises or bequests. The validity of the provision is sustained by the Court of Appeals in an opinion by Mr. Justice Duell, reported in this issue.

Action Against Husband and Wife; Directing Verdict.

In Rheam v. Martin, the action was in assumpsit against husband and wife to recover for work done and materials furnished in the erection of a house for defendants. The trial court rendered a judgment in favor of the plaintiff, but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the jury should have been instructed to return a verdict in favor of both defendants.

Police Regulations; Storage of Gasoline.

In Cahill v. District of Columbia, it was sought to review a judgment of the Police Court convicting the defendant for a violation of the police regulation prohibiting the storage and keeping of gasoline for sale without a permit. The plaintiffs in error were the proprietors of an automobile garage, and stored gasoline in an underground tank. It was contended in their behalf that the regulation in question was void; but the Court of Appeals, in an opinion by Mr. Justice McComas, sustains its validity, and affirms the judgment of the Police Court.

Criminal Procedure; Defective Indictment.

In United States v. Johnson a judgment of the trial court, sustaining a motion in arrest of judgment on the ground that the indictment was not sufficiently definite, is affirmed, in an opinion by Mr. Justice Duell.

Digitized by Google

In Memoriam.

ANDREW BROWN DUVALL.

A meeting of the bar of the District of Columbia was held on the afternoon of October 27, 1905, to take appropriate action on the death of Mr. Andrew B. Duvall, Mr. William John Miller, and the late Justice Andrew Wylie. The meeting was called to order by Mr. Hugh T. Taggart, president of the Bar Association, and Mr. Charles W. Clagett acted as secretary. In taking the chair Mr. Taggart spoke briefly, paying a deserved tribute to each of the deceased.

Mr. Justice Gould, of the Supreme Court of the District, was chosen as chairman of the meeting, and in taking the chair spoke as follows:

Remarks of Mr. Justice Gould.

Brethren of the bar, the object of this meeting has already been stated by the president of the Bar Association. I do not suppose it is expected that the presiding officer make any remarks, as that office is to be performed by other gentlemen. This has occurred to me, however, as I face this audience. I have a picture, taken in 1897 I think, of the then members of the bar, or a very large number of them, and last evening I happened, without having this meeting in my mind, to look at that picture as it hangs on my library wall and I was impressed, very deeply impressed, with the large number of those whose pictures formed a part of that group making up at that time the members of the bar who have passed beyond the "great divide" and are no longer among us. And Mr. Worthington remaked to me as I sat beside him just now that in his case, after his long experience at the bar, the number of those whose memory he now most cherishes is greater than the number of the actual practitioners at the bar today. And it is fit and proper that as these men who have borne their part honorably and well in discharging the important duties of lawyers in this community pass away, the bar should gather together and express, through formal action, what is in the hearts of every one of us towards those members whose memory we honor in the form of permanent resolutions.

The following committee was appointed to prepare resolutions in respect of the death of Mr. Duvall: Mr. R. Ross Perry, Mr. Joseph J. Darlington, Mr. J. Holdsworth Gordon, Mr. Aldis B. Browne, Mr. Benj. F. Leighton, Mr. Leon Tobriner, Mr. Sidney T. Thomas, Mr. Edward H. Thomas, and Mr. A. Leftwich Sinclair. The report of the committee was presented by Mr. R. Ross Perry as follows:

Mr. PERRY: Mr. Chairman, I am instructed by the committee of which I am a member to submit the following resolutions:

The members of the bar of the Court of Appeals and of the Supreme Court of the District of Columbia, assembled together for the purpose of giving expression to their deep regret and sorrow for the loss they have sustained in the death of Andrew Brown Duvall, have adopted and passed the following resolutions:

Whereas, we have heard with sincere sorrow of the sudden death of Andrew Brown Duvall, for many years an eminent and honored practitioner at our bar, and in all the relations of life equally eminent and worthy; and, whereas, we desire to place upon record our profound sense of the loss that has thus come to us and to the community in which we live, and a testimonial of our affectionate veneration for our deceased brother's memory;

Therefore, Be It Resolved, That in the death of Andrew Brown Duvall our bar has been deprived of one of its chief ornaments—a lawyer profoundly versed in the science of the law and skilled in its practice, a wise and upright counselor, and a zealous and earnest advocate; and that we shall ever hold in reverential remembrance his great legal attainments and manly qualities, his high sense of honor and sturdy integrity, his love of truth and justice, his fidelity to duty, his spotless purity of character, his courteous and dignified demeanor, and his admirable bearing as a member of the bar, as a citizen, and as a man.

Resolved, That the memory of Andrew Brown Duvall deserves to be cherished, not only for his legal attainments and learning and his sterling qualities as a citizen, but also by reason of the faithful and efficient services which he rendered the community as corporation counsel. He was appointed to this onerous and responsible position on June 1, 1899, and administered the affairs of the office with tireless energy, signal success, and unbroken fidelity until September 12, 1905, when he passed away; and while occupying the office he impressed upon the affairs of the District of Columbia imperishable marks of his learning, thoroughness, industry, and wisdom.

Resolved, further, That these resolutions be presented to the Court of Appeals, and to the Supreme Court of the District of Columbia, with the request that they be spread upon their minutes, as a tribute of respect to the memory of our lamented brother; and that a copy thereof be transmitted to the family of the deceased, to whom, in their deep bereavement and inconsolable loss, we tender our sincere and heartfelt sympathy and condolence.

J. J. DARLINGTON.

Address of Mr. R. Ross Perry.

Thousands of years ago, and almost the very first utterance of human poesy, were these words of Homer:

"Even as are the generations of leaves, such are those likewise of men. The leaves that be the wind scattereth on the earth, and the forest buddeth and putteth forth more again, when the season of spring is at hand. So of the generations of men. One springeth, and another passeth away."

It would seem that if the generations of men are but as the generations of leaves, human life should excite no regret when it ends; but yet if we consider more carefully the words of the poet, no such conclusion can be drawn from them. It is true that the leaves come in the spring and flourish in the summer, and in the winter they fall; but is not to be forgotten that this summer's leaves have been the life of the oak for this year, and that the generations of the falling leaves, successively, year after year,

Digitized by Google

have perpetuated for centuries the magnificent strength and beauty of the oak. And so is this fleeting human life of ours; the generations of men are as the generations of leaves; but let it never be forgotten that the men who live today, if thay do live but a summer, express and maintain in that summer the life of the race; and it is these failing, feeble, weak generations of men, century after century, and age after age, who have built up the tremendous heritage of the human race. So we do well, when among these generations of today, one of the men who has helped to sustain the honor and the integrity and the veracity of the human race—those things that make this life and its truth and its wholesomeness and its very existence during the time he lived in it—we do well, I say, when one of those men passes away, to give to his life the dignity not of a summer, but to give to it the dignity, in a sense, of eternity, because the qualities that have made it what it was, are not the qualities of time, but are the qualities of eternity. The world lives by the honor, the integrity, the veracity, by the courage, by the self-sacrifice, of these feeble men who preserve its life from year to year. One of such men has just gone from us, and it is of such a man that these resolutions speak.

We all knew Mr. Duvall in his professional life. I doubt whether all of us have paused to think carefully of that exact phase of professional life with which his last years were so conversant. While he was acting as legal adviser to the Commissioners of the District of Columbia, he had questions come before him, very numerous, very difficult questions, requiring the highest professional ability to deal with, questions often requiring courage in his management of them and his response to them; and only those of us, perhaps, who reflect upon it, and who appreciate what were the qualities required, and what the courage necessary was, can properly estimate his legal ability and his strength of character. In so far as the mere intellectual aspect of it was concerned, it was quick, vivacious, intelligent. In so far as the courage with which he advocated his conclusions was concerned, we all know that there was never any lacking of it. In so far as his appreciation was concerned of those qualities which demand of the man who undertakes to act as an advocate for another the utmost self-surrender, the utmost driving of self in work for that other, in order that in no point of duty he may fall away. I say in so far as those qualities were concerned, we all know he possessed them in a supereminent degree. When it came to the mere skill of the advocate, the clearness of his conceptions, the words in which he clothed his thought, the closeness of his logic, the vigor with which he drove his blows home, these we all appreciate.

But, Mr. Chairman, it is not that of which I want to speak more particularly today. There are at our bar, and at other bars, many men who possess this mere intellectual ability—if I may seem in any wise to belittle anything intellectual. There was something in Mr. Duvall, and not simply in his professional life, but in his general life as a citizen of this community, which touched something far deeper than that. I think we all will agree, no matter in what relation of life we knew Mr. Duvall, that he was a good man. Now, it is a very simple thing to say that a man was a good man. There are some who use that word in a derisive sense. It has been said that hypocrisy is the homage which vice pays to virtue; but that is a very unworthy way in which to express a great thought. I do not care what a man may be, he may be a mere man of the world, he may be a man who goes through life giving as little attention as possible to the great things of it which go beyond life; but whoever he may be, let him be as trivial in his thoughts and actions as you please, let him be so superficial that he does not appreciate the great verities of life, nevertheless that man, as well as the deepest and strongest man, knows what it is to be a good man. And although he be not one himself, he reverences a man who is good. I do not care how soiled a man's life may be, he reverences a clean man. He can not help it. Now, the great thing in the example of Andrew B. Duvall was that he went through life from boyhood—and I knew him as a small boy until he died the other day—an honest man, a truthful man, a clean man; in one word, he went through life a good man; and we all today here, we all today know it, and above all it is that in his character which we reverence, which we now pay our tribute to.

There remains a supreme phase of character, of which I ought to speak a word; and yet it is too sacred for a word to be said about it except in the most general way, and that is his domestic life. You would expect from a good, clean man, just the domestic life that he had. You would expect that there should be about his home a fragrant savor, a wholesome atmosphere of refinement, of gentleness, and of love; and there it was.

He was a man who spoke no slander; no, nor listened to it. He was a man who told no questionable stories. His tongue was as clean as his heart. And it must be that to that bereaved home, where consolation can not come, in one sense, yet it must be that some consolation can come, when his wife and his sons and his daughters know that such things are said of him as I have said today. And if consolation can further come, it must come from the fact that he was a Christian, and the Christian's God is the God of the fatherless and of the widow.

Address of Mr. J. Holdsworth Gordon.

Mr. Chairman, I have been accorded the privilege of seconding these resolutions, and I am glad to have the opportunity of saying a few heartfelt words of tribute to one whose memory I hold in tender recollection. I think I may say that I have known our friend as long, almost, as anyone in this room. We were boys together, and friends, and the years that have intervened have only added to the friendship and made it stronger. It seems almost impossible for me to believe that nearly forty years ago Duvall and I were college mates at Columbian, when it stood on the hill at the head of Fourteenth street. We were members also of the same Greek letter fraternity, the good old Sigma Chi, and many a time have we sat side by side at the festive board with our associates. Such relations could only bring us close together; and I learned to know him and esteem

Digitized by Google

him. There is no truer test of a man's reputation and his character than the opinion that is entertained for him by his college mates, and, tested by that rule, Duvall was wanting in nothing. As a student he was honest, conscientious, and true. He was honored and beloved by his associates; and he received, as he merited, the esteem of the faculty.

As he was as a boy, so he grew up as a man, upright, conscientious. He was a good citizen. As a member of this bar, he stood high. In the presentation of his cases he was always fair, and he enjoyed the confidence of the court. Of pleasing manners, he was forceful with the jury.

Dying, he has left behind him an example that all, young and old, may well emulate; a good citizen, a faithful public officer, a kind husband, a loving father, a sincere friend; and he has left for his children and his family that grandest of all legacies, an honored name and an unsullied reputation.

To me, Mr. Chairman, his death came with peculiar force, for he was one of the few left of those who started out with me in the race of life. One by one they have fallen away; and when I look around me and see how few are the faces of those who commenced at this bar with me I can but remember that I am no longer a young man; no longer one of the younger members of this bar, but that any day the summons may come to me to join the band of those who have passed away, and with whom some of the happiest days of my life were spent.

As he lived, so he died; at peace with the whole world. Oh, what a beautiful death! Do you remember how it was, with the bright sky above him, the grand old ocean around and beneath him? "Rocked in the cradle of the deep, he laid him down in peace to sleep." Ah, Mr. Chairman, knowing him as we all knew him who were intimate with him, we could almost imagine his death merely a transition from this world, with its bright sunshine, to the world beyond, bright with the smile of his Father's face; and we could almost think of him bidding farewell in the words of the poet:

"Life you and I have been long together,
Through cloudy and through pleasant weather;
'Tis sad to part, when friends are dear,
May cause, perhaps, a sigh, a tear;
Then steal out of sight,
Take thine own time.
Give little warning,
Say not, Good Night,
But in some better clime,
Bid me, Good Morning."

I move, sir, the adoption of the resolutions.

Address of Mr. Edward H. Thomas.

Mr. CHAIRMAN: The members of the bar will, I believe, approve of my action as the close official associate and friend of our deceased brother, in speaking of these resolutions, which attest his worth as a citizen, his learning and skill as a lawyer, his high sense of honor, his fidelity to duty, his courteous and dignified demeanor, his spotless purity of character, and his love of truth and justice. Resolutions which, of necessity, find that the product of this work, learning, honor, and fidelity was the successful administration of the complicated and important duties of his public office, and eminent success in all departments of the law.

With the duties of the office of attorney for the District of Columbia, city solicitor, or corporation counsel, as successively called, I have within the past four years become somewhat familiar. I have nearly all that time watched with appreciation the treatment of men and officials by Mr. Duvall, and his disposition of problems of law and human conduct brought before him, more particularly in the privacy of his office. Of his ability as an advocate and trial lawyer, it is unnecessary for me to speak. I never knew him to hesitate in the line of duty. What was the law and equity and right of the matter was his constant objective inquiry, and what were the best interests for the citizen and the District the ultimate aim of his decision, without regard to personal interests and aside from selfish ends.

His course of conduct never varied in the slightest degree, because criticism would be the inevitable result of an intended decision, unfavorable to the disappointed urgency of some friend, fellow citizen, lawyer, or official anticipating a different outcome of some case or matter submitted for opinion.

On reflection I find that a thought can, with great propriety, and of necessity, I think, be added to the resolutions, that shall represent his incomparable patience—patience coupled with a certain quiet and persistent firmness against changing his conclusions. These conclusions were the result of sound logic, a disposition opposed to undue haste, and a wide legal knowledge.

No opponent ever trampled on him at the bar, nor attempted to do so without meeting worthy opposition; and yet as I came to know him better and to profit by his accumulated wisdom, I learned that he preferred peace to strife; I found that he loved his friends and had a warm, kind heart for his brethren at the bar. One grew to appreciate that he was in reality that rare example of humanity—a just man. If asked to state what was his most striking characteristic, I would say in reply, his love of truth and justice.

May I not refer, then, to his cordial relations with his superior officers, the Commissioners of the District of Columbia, who have spread their testimonial on the District records, and said of him, that "his judgment, always rendered after careful consideration, was based upon experience and legal knowledge acquired during many years of active and successful practice before the courts, and was so accurate that the Commissioners relied upon it with perfect confidence? . . . In his hands the interests of the District were safe-guarded to the last degree. Not only was he a faithful public servant, but as a man he possessed those virtues which are worthy of emulation, and which endeared him to all with whom he was brought in contact. The Commissioners feel that in paying this tribute to his memory they are discharging a debt of appreciation which the community owes to the counsel who represented them so honestly and so ably before the courts."

The heads of the various departments and the employees of the District were his friends. Witness their sorrow at his death, evidenced by the large assembly present at their meeting in his memory. To those of us who represented his

Digitized by Google

immediate staff and were his constant associates his death is a personal loss. Where can we find such intimate knowledge of the intricacies of statutory law, orders, and practice concerning our municipal government, which he possessed and which we need to know every day?

Where and from whom will we get the same gentle and considerate treatment of our negligence, joint and several, of omission and commission, in the tasks set before us. Were it necessary to do so, we might attempt to raise a challenge, without echo or response, to our inquiry whether any personal in official life or out of official life has ever heard him excuse himself of any default or mistake by charging it to any of us, though we were or some of us were alone responsible. He always, in such cases, cheerfully accepted responsibility for mistakes he did not make. Before judges and courts, before commissioners and heads of departments, the mistakes of his subordinates, without word of blame, were assumed by him. Nothing but praise and good words for us came from his kind heart, unknown in its full generosity, except by those who had a right to know.

The resolutions speak of his courteous and dignified demeanor. These are true words. Andrew B. Duvall was one of the gentlemen of the bar and never enjoyed the atmosphere of commercialism which environs the bar at the present day.

In the trial of causes, in his treatment and consideration of the court and fellow members of the bar, he always maintained a knightly spirit and courteous demeanor.

He has left behind him for us and for his son, a fellow member of our bar, who inherits his father's spirit, that good name which is better than great riches, for he knew justice and taught her precepts by his daily life.

Address of Mr. A. Leftwich Sinclair.

The Hon. Andrew Brown Duvall, whom we mourn, was my friend; and while I realize that no eulogy of mine can add glory to the lustre of his name, I should be doing great injustice to my feelings did I not put into the record of these proceedings a slight and humble tribute of respect to his memory.

My acquaintance with Mr. Duvall began on the fifth day of October, 1891, and it soon ripened into a friendship which, I am pleased to state, waxed warmer and stronger as it grew older. I can remember well the day I met him. I was introduced to him by my friend Mr. J. J. Darlington, at whose request Mr. Duvall kindly took me into his office, on the date mentioned, as a law student; and it was my good fortune to remain in association with him continuously thereafter until he passed away, nearly fourteen years. I passed many pleasant, profitable moments with him during that time. He freely advised with me and never seemed to weary in placing his time at my disposal or in opening his rich treasure house of learning for my benefit.

I can subscribe to everything contained in the resolutions that have been offered and can bear testimony to the traits of character in my deceased friend and associate of which others have so eloquently spoken. All that can be said of the ablest and best I am prepared to say of him. He was a scholar; he was an able lawyer; he was an honorable and useful citizen; he was a noble-hearted, just man.

That which most impressed me in my long acquaintance and association with Mr. Duvall was his unremitting faithfulness to every duty, his thoroughness, his industry, his capacity for work, his love of rectitude, his noble fidelity in friendship, and his wide range of information.

Every subject Mr. Duvall touched he became master of. His researches were untiring. Not content with scratching the crust merely he penetrated the strata and foundation. The opinions written by him while corporation counsel—and he wrote a great many important ones—evidenced a remarkable grasp of the subjects he was considering, and were characterized by that purity of style and clearness of thought which marked whatever he wrote or spoke.

His instinct was quick and remarkably correct, and he was disposed to rely with a great deal of confidence upon the impression which the first view of a subject made on his mind, but he was always ready to correct the first impression if, upon further examination, he found grounds for change.

Mr. Duvall disliked ostentation, and was averse to the acts and displays to which men very often resort to achieve reputation. He did not belong to the skyrocket class. In his habits and feelings he was the most unassuming of men. There was nothing artificial in his conduct, manners, or opinions; all was easy, quiet, and natural. I never knew him to be excited or angry; he always kept his emotions within easy control; he was not revengeful in his nature. Hate and resentment found no resting place in his heart. During my long and intimate association with Mr. Duvall, I never knew him to utter a cruel or unkind word about anybody. He was kind and considerate, incapable of malice or ill-will and patient almost to a fault.

"His life was gentle, and the elements
So mix'd in him that Nature might stand up
And say to all the world, 'This was a man.'"

Socially, Mr. Duvall's warm-hearted, bright, cheerful, and affectionate disposition endeared him to those who knew him well. He was a kind and true friend and a genial companion. His views of life were exalted; and a slight acquaintance with him soon disclosed that he was actuated by a high sense of duty, and that he was possessed of an integrity of character coupled with no austerity. He was, to my mind, a typical Christian gentleman. He realized that he was to pass through this way but once, and his aim seemed to be to be helpful to his fellow-travelers.

A living example of purity and devotion to duty, when the summons came to appear before the bar of that highest tribunal it found him not unprepared. All who knew him knew he was ready, in proper person, to enter an appearance there.

"So live, that when thy summons comes to join
The innumerable caravan that moves
To that mysterious realm, where each shall take
His chamber in the silent halls of death,
Thou go not, like the quarry slave at night,
Scourged to his dungeon; but, sustained and soothed
By an unfaltering trust, approach thy grave
Like one that draws the drapery of his couch
About him, and lies down to pleasant dreams."

Digitized by Google

Court of Appeals of the District of Columbia.

HENRY F. IGLEHART AND MARY D. POLK, APPELLANTS,

v.

J. HOWARD IGLEHART, EXECUTOR OF THE LAST WILL AND TESTAMENT OF ANNIE E. I. ANDREWS, APPELLEE.

WILLS; BEQUEST TO ERECT MONUMENT; DEVISE TO CEMETERY COMPANY; COMITY; CONVERSION; TRUSTS.

1. A bequest by a testatrix, who left no husband or children, of the sum of $5,000, being about one-half her entire estate, to be expended for the erection of a monument at the grave of her husband, is valid.
2. Section 669, Code D. C., providing that cemetery companies incorporated under its laws may take and hold real estate and personal property, and use the income thereof for the care of cemetery lots, monuments, etc., the right of a corporation under the laws of New York, which by its charter is given similar powers, to take a devise of land in this District for such purposes, will, upon principles of comity, be recognized and upheld.
3. A devise of real estate to the Greenwood Cemetery, New York, if real estate in this District, in trust for the use of decedent's brother for life, and on his death to be converted into money and the proceeds to be invested, the income therefrom to be used by the cemetery company, as trustees, in trust for keeping a lot in perpetual good order, held valid.
4. The express direction to sell, though the time of sale was not immediate, operated to convert the property into personalty from the death of the testatrix.
5. Equity will not allow a trust to fail for want of a trustee, but will, if necessary, appoint a trustee to carry it into effect.

No. 1593.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,938, in suit to construe a will. Affirmed.

Mr. Andrew Wilson, *Mr. N. W. Barksdale*, and *Mr. W. C. Balderston* for the appellants.

Mr. W. V. R. Berry, *Mr. B. S. Minor*, *Mr. T. L. Jeffords*, *Mr. C. H. Stanley*, and *Mr. H. B. Rowland* for the appellee.

Mr. Justice DUELL delivered the opinion of the court:

This is an appeal from a decree holding valid the last will and testament of Annie E. I. Andrews, and its provisions making certain devises and bequests to the Greenwood Cemetery Company of New York.

The record discloses that the deceased, a resident of the District of Columbia, died in 1903, leaving a will dated March 19, 1903. The amount of the estate was something over $10,000, of which $3,000 was in real estate situate in the District, and the balance personalty. The will having been duly probated, the executor filed this bill for its construction. The heirs contend that clauses one, ten, and twelve are invalid. The first clause devised and bequeathed to the Greenwood Cemetery Company of Brooklyn, N. Y., as trustees, the real property which consisted of a house and lot. This was to be held in trust for the use of decedent's brother and his wife during their life, or the life of either of them, provided that they kept the property in repair and paid the taxes on it. At their death, or upon their failure to comply with the recited condition, the property was to be sold and the proceeds invested in United States securities, the income therefrom to be used by the cemetery company, as trustees, for the purpose of keeping the Andrews' lot in perpetual good order. The tenth clause derected that $5,000 be taken from the estate to be expended for a monument at the grave of her husband, E. L. Andrews, in Greenwood Cemetery. The twelfth clause directed that the residue of her property, after payment of legacies, debts, and the like, be converted into cash and invested in United States securities, and the income therefrom be used by the cemetery company, as trustees, as an additional fund for the preservation and care of the lot before referred to. The case was heard by stipulation upon the pleadings and an agreed statement of facts. The admitted facts do not require to be set forth as, in our opinion, they do not affect the decision at which we have arrived.

The assigned errors are three in number and relate respectively to the validity of the devise of the real estate to the cemetery company, the validity of the residuary bequest, and the validity of the provision for the erection of the monument.

The latter will be first passed upon. There seems to be no question that the decedent's husband was buried in Greenwood Cemetery, and no trouble arises in locating the lot. There is no trouble in carrying out the provision of the will providing for the erection of the monument and no difficulty in upholding the clause relating to it and separating it from the other provisions attacked. The deceased was admittedly of sound mind, left no husband or children surviving her, and was under no legal obligation to leave her property for the support of her relatives. It may be conceded, as claimed, that the amount is greater than ordinarily expended for such a purpose by those in the same station of life as decedent without warranting us in holding that the provision should be overthrown. The court below was not in error in upholding it, and we agree with the conclusion of the learned justice in upholding it and with the reasons adduced by him.

The question of the validity of the bequest of the real estate presents a more serious question. It is contended with much force that the conveyance, or attempted conveyance, of the real estate to the trustee creates a perpetuity, and is, therefore, void. If there were no exceptions to the general provisions of the law applicable to the subject we would be compelled to hold that the devise was unquestionably void, but there are exceptions, and the question ultimately to be decided is whether this devise falls within the exceptions or of any of them.

It is urged on behalf of the Greenwood Cemetery Company that the bequest is valid because it is for a charitable use. At least many of the cases referred to by it are cases where such bequests have been sustained as being for charitable uses. We think, however, that the bequest can not be upheld on such ground, for the weight of authorities is that bequests for the care of burial lots are void as creating perpetuities, for such uses are not charitable. Bates v. Bates, 134 Mass. 110, and many English cases there cited.

The ground upon which the bequest must be sustained, if upon any, is that the laws of the

Digitized by Google

District of Columbia provide that cemetery companies incorporated under its laws can take and hold real estate and personal property, and use the income thereof for the care of cemetery lots, monuments, etc.; and though it is contended by appellants that as the Greenwood Cemetery Company is not incorporated under the District laws, this exception contained in section 669 of the Code does not apply, yet it is admitted that the laws of the State of New York, under which the Greenwood Cemetery Company is incorporated, permit it to take real and personal property for the purpose of using the income for the care of cemetery lots, renewal of monuments, etc. It will be seen, therefore, that the policy of the law of the District of Columbia, where the deceased was domiciled, makes a clear exception to the common law, and also to the statutory law of the District, so far as cemetery companies incorporated under the laws of the District are concerned; and that the laws of the State of New York, where the proceeds of the real estate are designed to be taken, and where the trustee has its legal abode, permits the trustee to take and hold real and personal property, and creates the same exception. It scarcely seems possible that Congress intended to be so narrow as would be the case if it intended, in permitting cemeteries incorporated under the laws of the District to take and hold property for the purpose specified, to refuse to recognize a like right in similar companies incorporated under the laws of the various States where a like privilege was granted. We think rather that Congress considered that it was necessary to specify companies organized in the District in order that they could acquire and hold property for the purpose specified, and believed it unnecessary to provide that such companies, incorporated under the laws of the States in which they were given like privileges, could take real and personal property situated in the District, and which was to be taken out of the District and administered elsewhere. It is fair to presume that Congress knew of and recognized the rule now well established and generally followed that, "while the laws of the testator's domicile govern as to the formal requisites essential to the validity of the will, the capacity of the testator and the construction of the instrument, the validity of particular bequests depends (unless expressly prohibited by the law of the testator's domicile) upon the law of the domicile of the legatee." Congregational Unitarian Society v. Hale, 29 Appl. Div. (N. Y.) 396.

The rule of comity permitting a foreign corporation to acquire and hold lands by devise is now generally recognized, provided their charters permit them so to do, and no prohibition is found in the laws or public policy of the domestic State. Am. & Eng. Encly. Law, vol. 13, page 856, 2d ed. The public policy of the District of Columbia permits in express terms, as shown by express legislation, its cemetary corporations to receive such bequests. The State of New York permits the Greenwood Cemetery Company to hold such bequests as the one in question. It seems to us that it follows from the general law of comity prevailing among the various States of the Union, that we should recognize and uphold the right of this appellee to receive the bequests provided by the will. While there is some conflict in the decisions of the courts of the various States, we think that the decisions of the United States Supreme Court, which are controlling upon us, favor this doctrine of comity. Christian v. Yount, 101 U. S. 352. In the light of the decision in that case, it can not be successfully contended that something which the District of Columbia permits to its own corporations is so far against its public policy that it will not permit persons domiciled within its territory to devise their property to be used for the same purpose by a foreign corporation authorized by its own charter to receive and administer such bequests. But the position of the appellee is, we think, much stronger, for we have treated the property devised by the first clause of the will as real property. It appears that the will expressly directs that the real estate shall be sold upon the death of the life tenants, and perhaps sooner. The proceeds are to be invested in personal property. The authorities are quite well agreed that such express direction of sale, though the time of sale is not immediate, operates to convert the property into personalty from the death of the testator. Hope v. Brewer, 136 N. Y. 126; Reiff & Brinkley v. Strite, 54 Md. 298. It is unnecessary to multiply authorities upon this point. The real estate being once converted into personalty, it matters even less, than in the case of real estate, to the District of Columbia whether such property goes into the hands of a foreign corporation to be held in trust as a perpetuity, or whether it be put to other uses. The District of Columbia, and its residents, are more interested in having the right of foreign cemetery companies to take property, real and personal, situate in the District, for the purpose of the care of cemetery lots, and the maintenance and care of monuments erected thereon, recognized, than other States or their residents can be, for the reason that so many of the people domiciled in the District come from other localities, or are the descendants of those who came from such localities, and, while passing their lives here, expect upon death to be laid in cemeteries located outside the District and which are not incorporated under its laws. In considering the policy of the laws of the District we think this fact should not be lost sight of, and in interpreting its laws we must bear in mind that they are enacted by Congress, which represents all sections of our common country. The law of comity should therefore be recognized even more broadly here than elsewhere, in all questions like the one under consideration.

Irrespective, however, of the peculiar conditions which here exist, we think the weight of authority upholds the decision of the lower court; and, while we were much impressed by the full and careful presentation of appellants' counsel, we do not find sufficient cause for holding that any error was committed in upholding clauses 1 and 12 of the will.

We do not think it necessary to here pass upon the question whether the Greenwood Cemetery Company has power under its charter to act as trustee in the District of Columbia for property here located, and no power to convert the real estate into personalty, for the

Digitized by Google

reason that equity will not allow the trust to fail for want of a trustee, but will, if necessary, appoint a trustee to carry it into effect.

There being no reversible error committed by the court below, it follows that the decree appealed from should be affirmed, with costs. And it is so ordered.

WE are privileged to give in this issue the resolutions respecting the recent death of Mr. Andrew B. Duvall adopted at the meeting of the bar held on October 27, together with the addresses paying tribute to his memory made on that occasion. Rarely have more graceful and beautiful, and at the same time well-deserved, eulogies been uttered, and we are assured our readers will join with us in thanking the Bar Association for the privilege of enabling us to preserve them in permanent form. The resolutions and addresses on the death of Mr. William John Miller will be printed in full in an early issue of THE LAW REPORTER.

An adjourned meeting of the bar was held on Friday, November 3, 1905, to take action respecting the death of Justice Andrew Wylie. Resolutions were adopted and addresses made by several members of the bar, which will be given in full in our columns hereafter.

Bills and Notes—Transactions with Decedent.—Where, in an action by an administrator on a note, there is no evidence as to the transaction in which the note was given, except the evidence of the maker, incompetent under the statute, judgment must be rendered for plaintiff. Union Trust Co. v. Morgans (Mich.), 103 N. W. Rep. 568.

Bills and Notes—Negotiability.—Where a note payable to order is assigned without indorsement, its negotiable character is destroyed. Cornish v. Woolverton (Mont.), 81 Pac. Rep. 4.

Master and Servant—Safe Place to Work.—A stevedore held not liable for the death of a servant caused by the defectiveness of the hatch of a vessel, over which such stevedore had no control, for failure to furnish deceased with proper appliances and a safe place to work. Hyde v. Booth (Mass.), 74 N. E. Rep. 337.

Master and Servant—Failure to Warn Servant of Defects.—A master held not negligent in failing to warn a workman of defects in the floor of an unused room which the workman was ordered to clean. O'Keefe v. John P. Squire Co. (Mass.), 74 N. E. Rep. 340.

Master and Servant—Fellow Servants.—The fact that the negligence of a fellow servant concurs with the master in causing injury to a servant does not exempt the master from liability for his negligence. Merrill v. Oregon Short Line R. Co. (Utah), 81 Pac. Rep. 85.

Banks and Banking—Fraud of Officer.—In suit by a bank depositor against the bank and its president to establish the equitable title of the bank to certain shares of railroad stock, contention of president that judgment was unfair and inequitable held untenable. Dundon v. McDonald (Cal.), 80 Pac. Rep. 1034.

Bankruptcy—Proceeds of Life Insurance.—Exemption of policies of life insurance under Bakruptcy Act, ch. 541, sec. 6, where exempt from execution by the State law, held not qualified by proviso in section 70a of that act. Holden v. Stratton, U. S. S. C., 25 Sup. Ct. Rep. 656.

Bankruptcy—Assignment of Future Wages.—An assignment of wages to be earned in the future to secure a debt can not be enforced against a debtor, after his discharge in bankruptcy, as to wages thereafter earned by him. Leitch v. Northern Pac. Ry. Co. (Minn.), 103 N. W. Rep. 704.

Bankruptcy—Effect of Discharge.—A judgment against an insolvent, after he is adjudged a bankrupt and before his final discharge, on a provable claim, held canceled by such discharge. Cavanaugh v. Fenley (Minn.), 103 N. W. Rep. 711.

Negligence—Evidence of Other Negligent Acts.—Where, in an action for injuries, the negligent acts relied on are alleged, plaintiff can not recover on proof of other negligent acts, causing the injury. Chicago City Ry. Co. v. Bruley (Ill.), 74 N. E. Rep. 441.

Partnership—Administrator of Deceased Partner.—Where administrator of deceased partner misapplies the funds in payment of debts of the firm, he and the other partners are liable for the misappropriation. Hibberd v. Hubbard (Pa.), 60 Atl. Rep. 911.

Nuisance—Abatement of Public Nuisance.—To confer jurisdiction in equity to abate a public nuisance, plaintiff must have suffered special damages, incapable of being measured. George v. Peckham (Neb.), 103 N. W. Rep. 664.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Digitized by Google

Legal Notices.

FIRST INSERTION.

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia,

Alexander B. Hagner, in His Own Right, and as Executor, et al., Complainants, v. John H. Walter, Trustee, et al., Defendants. No. 25,589. Equity Docket 57.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, Washington, D. C., beginning for said part of said lot at the northeast corner of lot 9, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 9th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser and Sophia Stewart, trustees,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, ——Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, Junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

[Seal]

nov 10, 17, 24; dec 2, 9; jan 5, 12.

Ellwood O. Wagenhorst, Solicitor

In the Supreme Court of the District of Columbia.

Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedian, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, **Susan E. Hedian,** cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D, 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, **Susan E. Hedian,** and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal]

nov. 10, 17, 24; dec. 1.

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Legal Notices.

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John A. Barber,** late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of November, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of November, 1905. J. WILLIAM HENRY, 1319 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,255. Administration. [Seal.] 45-3t

---

George C. Gertman, Solicitor

In the Supreme Court of the District of Columbia.

The Atkinson and Ballard Company, a Corporation, Complainant, v. The Unknown Heirs and Devisees of Benjamin Stoddert et al., Defendants.

Equity. No. 25,714. Doc. 57.

The object of this suit is to obtain a decree perfecting and establishing of record the complete title of the complainant to lots numbered twenty-three (23) and twenty-four (24) in Lloyd P. Pumphrey's subdivision of certain lots in square numbered sixty (60), in the city of Washington, in said District, as described in the bill of complaint. On motion of the complainant, by George C. Gertman, its solicitor, it is by the court, this 9th day of November, 1905, ordered that the defendants, the unknown heirs and devisees of Benjamin Stoddert; George Scott, executor, and in his own right; Jonathan Scholfield (of Issacker), executor, and in his own right; Mahlon Scholfield; Benjamin Waters, trustee, and in his own right; Sarah Talbot, Ann Dobey, John Balderson, Eliza Cowen, Lucretia Edmonston, John Woods, Rachael A. Levering, Joseph Scholfield, Hannah Scholfield, Sarah Scholfield, Lewis Scholfield, William Scholfield (of Mahlon); Elizabeth Hopkins, Rachael Hodge, Ann Scholfield, Thomas Scholfield, Andrew Scholfield, William Scholfield (of Issacker); Martha Stanton, James Stanton, Jane Anderson, Sarah Anderson, Mary Anderson, William Elliott, Joseph Elliott, Sarah Elliott, Margaret Elliott, Maria Elliott, Thomas Elliott, Mary Elliott, James Evans, (of Jonathan); John Evans (of Theophilus); George Evans, Cadwallader Evans, Oliver Evans (of Oliver); John Lampley, Elizabeth Lampley, Eliza W. Evans, Rachel Evans, Leah Evans, Thomas Evans, Evan Evans, Jesse Evans, Oliver Evans (of Joseph); Abner Evans, George Evans, Joseph Evans, Joseph Ball, William Brackin, Adeline Brackin, Elizabeth Brackin, Margaret Brackin, and Minnie Johnson, or if either or all of them be dead, then the unknown heirs and devisees of any or all of the above-named defendants, cause their appearance to be entered herein on or before the first rule day occurring forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order, otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once in November and three times weekly in December, 1905, prior to said return day, good cause having been shown by the bill and affidavit filed herein, to the satisfaction of the court, that further or longer publication is unnecessary. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

[Seal]

nov. 10; dec. 1, 8, 15

Andrew B. Duvall, E. H. Thomas, Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Snowden W. Robinson, Complainant, v. Alvira Robinson, Sewell R. Duley et al., Defendants.

Equity No. 25,770. Doc. 57.

The object of this suit is to appoint a new trustee for the estate of James S. Robinson, deceased. On motion of the complainant, it is this 9th day of November, 1905, ordered that the defendants, **Mary A. Collins and Mary Edna Collins, infant,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

[Seal.]

45-3t

Digitized by Google

Legal Notices.

J. H. Lichliter, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of John W. Smith, Deceased.
No. 13,238. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Emma J. Smith, widow of said deceased, it is ordered, this 8th day of November, A. D. 1905, that notice be and hereby is given to **Thomas Leander Smith, Della Bell Smith, Dessa Bell Smith, Etta Alma Smith** (infant), **Lotus Mae Smith** (infant), **La Fayette P. Ripley, Leffingwell D. Ripley, Frank N. Ripley, Elizabeth J. Ripley, Edna (or Etna) V. Harwood, Grace Kaufer, Ida B. Berger, and Arthur S. Thompson**, all non-residents of the District of Columbia, and to all others concerned, to appear in said court on **Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 45-3t

B. H. Loucks, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Court of Equity.
In the Matter of Composite Brick Manufacturing Co., a Corporation. Equity. No. ——.

It appearing to the court that a petition has been filed herein praying that the Composite Brick Manufacturing Company, a corporation, organized under the laws of the District of Columbia, be dissolved as provided by section 768 of the Code of the said District and for other relief, it is, this 7th day of November, ordered that notice of this application be given to all persons concerned and requiring all persons concerned to appear in this court and show cause, if any they have, on the **11th day of December, 1905**, why the said corporation should not be dissolved, a receiver appointed to take charge of the assets of said corporation, and for general relief. It is further ordered that this order be published in The Washington Law Reporter and in The Washington Post once a week for three successive weeks, the first insertion to be not less than one month before said return day. It is further ordered that a copy of this order be mailed to all stockholders, bondholders, and creditors whose names appear in said petition thirty days before said return day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 45-3t

Berry & Minor, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
William Peyton Tucker and Nathaniel Beverley Tucker, Complainants, v. Henry W. Bartol, E. Welsh Ashford, and Erwin Cyrus Brainerd, Respondents. Equity, No. 25,746.

The object of this suit is to substitute trustees in the place and stead of E. Welsh Ashford and Erwin Cyrus Baumgras (now Erwin Cyrus Brainerd), under a deed of trust dated September 13, 1900, and recorded in liber 2520 at page 118 of the land records of the District of Columbia, from William Peyton Tucker and Nathaniel Beverley Tucker and wife to E. Welsh Ashford and Erwin C. Baumgras (now Erwin Cyrus Brainerd), trustees, conveying lot 50 in Frank L. Hanvey's subdivision of lot 8 in block 34, "Columbia Heights," in the city of Washington, District of Columbia. On motion of the complainants, by their solicitors, Berry & Minor, and it appearing to the court that the summons issued herein against the respondent, E. Welsh Ashford, has been returned "not to be found," and the non-residence of the said respondent having been proved to the satisfaction of the court, it is, this 8th day of November, 1905, ordered that the said respondent, **E. Welsh Ashford**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 45-3t

Legal Notices.

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph E. McDonald**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. JESSIE C. McDONALD, Colorado Building, Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,236. Administration. [Seal.] 45-3t

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.
Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants.
No. 25,588, Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 8½ inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 8½ inches; thence south 183 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 8½ inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and alienees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —— Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal]
nov 10-17-24; dec 2-9; jan 5-12

Samuel Maddox, Solicitor

In the Supreme Court of the District of Columbia.
Hattie Hicks et al., Complainants, v. Margaret R. Trotter et al., Defendants. Equity No. 23,164.

Upon consideration of the report of H. Prescott Gatley, trustee, herein filed, it is this 6th day of November, A. D. 1905, ordered that said trustee be, and he is herby, authorized and directed to sell to Florence A. DeLong lot 20 of Daniel Birtwell's subdivision of lot 10, block 13, Rosedale and Isherwood, for the sum of $860, cash; and that said sale, so made, shall be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 45-3t

Digitized by Google

Legal Notices.

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Susana Griswold, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 27th day of November, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of November, 1905. GEORGE PRINCE, by Wolf & Rosenberg, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,496. Admn. [Seal.] 45-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the States of Illinois and Georgia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Hannah Lavinia Bartlett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of November, 1905. WILLIAM HOLABIRD, Monodnock Block, Chicago, Ill.; JOSEPH WILLARD PRESTON, 407 Equitable Building, Atlanta, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,193. Administration. [Seal.] 45-3t

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

The Springfield Fire and Marine Insurance Company, a Corporation, Complainant, v. John B. Wight et al., Defendants. Equity No. 25,122.

Charles S. Shreve, Jr., and William F. Hall, trustees, having reported to the court that they have received a private offer to purchase lots, viz: All of lots D, E, F, G, H, and I, in Gideon L. Walker's subdivision of lots in square numbered one hundred and seventy-two (172), as per plat recorded in liber R. W., folio 128, surveyor's office, D. C., more fully described in the original order of sale herein, from John M. Clapp, for the sum of ninety-five hundred dollars ($9,500), all cash, it is, by the court, this 7th day of November, A. D. 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 9th day of December, A. D. 1905. Provided that a copy of this order be published once a week for three successive weeks prior to said last mentioned date in The Washington Law Reporter.

[Seal] By the Court: THOS. H. ANDERSON, Justice.

A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. nov 10, 17, 24

Harry G. Kimball, Solicitor

In the Supreme Court of the District of Columbia. Alice M. Peck, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Appelona Whitehair, Deceased, et al., Defendants.
In Equity. No. 25,782.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (103) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of Appelona Whitehair, deceased, and the unknown heirs, alienees, and devisees of Justinian Mayberry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times.

[Seal] By the Court: THOS. H. ANDERSON, Justice.

True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 19-19

Legal Notices.

R. Ross Perry & Son, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Caldwell Poor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A.D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. ELLA POOR, care of R. Ross Perry & Son. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,224. Administration. [Seal.] 45-3t

Wm. E. Harvey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration d.b.n. on the estate of Daniel A. Connelly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of November, 1905. WILLIAM B. KING, 728 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 1179. Administration. [Seal.] 45-3t

SECOND INSERTION.

Benjamin Carter, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Florence H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. BENJ. CARTER, Bond Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,229. Administration. [Seal.] 44-3t

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Catherine McGuinn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. HENRY P. BLAIR, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,191. Administration. [Seal.] 44-3t

Thos. Walker, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. WALTER G. BRADLEY, New York Mills, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,762. Administration. [Seal.] 44-3t

Digitized by Google

Legal Notices.

Benjamin S. Minor and T. Percy Myers, Solicitors

In the Supreme Court of the District of Columbia,

Tillotson E. Brown et al. v. Charles W. Brown et al.
In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 55 feet of lot 1, in square 397, with the improvements thereon, to Tillotson E. Brown for the sum of $9,750; lot 2, in square 556, with the improvements thereon, to Mary A. Martin, for the sum of $1,275; and sublot 70, in square 445, to Tillotson E. Brown, for the sum $1,124.12, it is, this 30th day of October, A. D. 1905, by the court, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 30th day of November, 1905. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-3t

---

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adolphe Berger**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,228. Administration. [Seal.] 44-3t

---

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Nathaniel E. Thompson, otherwise known as Elbridge N. Thompson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 20th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 2d day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer; by John B. Larner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,523. Adm. [Seal.] 44-3t

---

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Alienees of George Mason and Others. No. 25,700. Equity Docket No 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and alienees of **George Mason**, of **William Mason**, of **A. E. Grimes**, and of **Elizabeth Hooe**, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in the Washington Times. By the court: THOS. H. ANDERSON, justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal.]

nov 3-10; dec 1-8; jan 5-12

Legal Notices.

Douglass & Douglass, Solicitors

In the Supreme Court of the District of Columbia.

Samuel Rothert et al., Complainants, v. Susie Brice et al., Defendants.
Equity No. 25,487. Doc. 56.

Edgar B. Sherrill and John R. Shields, trustees, having reported to the court the sale of the real estate mentioned and described in the bill of complaint filed in the above entitled cause, being parts of original lots numbered 2 and 3 in square numbered 69, in the city of Washington, in the District of Columbia, beginning for the same at a point 5 feet east from the southwest corner of original lot numbered 2 in said square, and running thence north 100 feet; thence west 22 feet 6 inches; thence south 100 feet to the line of N street north, and thence east 22 feet 6 inches to the beginning; being the same land included in lot numbered 190, in said square numbered 69, according to a subdivision made by John H. Rothert, and recorded in book No. 28, page 126, in the office of the surveyor for the District of Columbia, to Albert Marshall for the sum of one thousand five hundred seventy-five dollars ($1,575), it is by the court, this 27th day of October, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **28th day of November, 1905**. Provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 44-3t

---

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

D. H. Roland Drury v. Minnie Fuller and Others.
No. 25,650 Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are **Minnie Fuller** (if living), and the unknown heirs, devisees and alienees of **Minnie Fuller** (if deceased), of **Andrew Schoifield**, of **Robert Leckie**, of **Ruth Fuller**, of **Calhoun Clark**, and of **Sarah F. Fitzgerald**. On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal]

nov 3-10-17; dec 1-8; jan 5-12

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Edwin S. Houston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN & TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,067. Administration. [Seal.] 44-3t

---

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid forat more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W

Digitized by Google

Legal Notices.

Jos. D. Sullivan, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of George H. Plant, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of November, 1905. ARTHUR G. PLANT, care of Traders National Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,249. Admn. [Seal.] 44-3t

Ralston & Siddons, Solicitors.

In the Supreme Court of the District of Columbia, Joseph H. Byram, S. Norris Thorn, Trustees of the Home Building Association, of the District of Columbia, v. The Unknown Heirs, Devisees, and Representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, and Thomas Barclay, George Barclay, and Anthony Barclay. Equity No. 25,658.

Process having been duly issued against the defendants herein and returned "Not to be found," although diligent efforts have been made to find them, it is, this 23d day of October, A. D. 1905, ordered that the unknown heirs, devisees, and representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, Thomas Barclay, George Barclay, and Anthony Barclay, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three weeks in The Washington Law Reporter and The Washington Post; otherwise this cause will be proceeded with as in case of default. The object of this suit is to establish of record the title in fee simple of the complainants to part of lot two hundred and nine (209) in square twelve hundred and fifty-nine (1259) in the city of Washington, District of Columbia, described as follows: Beginning for the same at the northwest corner thereof and running thence south 122 feet 8 inches to the south line of said lot; thence east 31 feet 1 inch; thence north 10 feet (the width of the alley hereinafter reserved); thence east 2 feet 2 inches; thence north 20 feet, more or less, to the south line of lot conveyed to Jared Nichols; thence west 25 feet; thence north 90 feet to line of West street, and thence west 8 feet 3 inches, more or less, to the place of beginning; with the right to use a 10-foot alley running along and over the south part of lots 209 and 210 to give an outlet on Montgomery street. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal.] 44-3t

THIRD INSERTION.

[Filed October 23, 1905, J. R. Young, Clerk.]
Carlisle & Johnson, Solicitors.

In the Supreme Court of the District of Columbia, Louis P. Shoemaker, Trustee, v. The Unknown Heirs, Alienees, and Devisees of John C. Roemele and William or William B. Smith. No. 25,621. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the west half of lot seven (7) in Samuel Davidson's recorded subdivision of lots in square one hundred and sixty-three (163), fronting fifteen (15) feet on the north side of K street northwest, by depth of one hundred (100) feet eleven (11) inches, in the city of Washington, District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant by his solicitors, Carlisle & Johnson, it is this 23d day of October, A. D., 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of John C. Roemele and William or William B. Smith cause their appearance to be entered herein on or before the first rule day occurring forty days after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in the Washington Law Reporter and the Washington Post at least once in the month of October and at least three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal.] 43-4t

Legal Notices.

John Lewis Johnson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Ellen M. Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. WILLIAM A. FOY, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,135. Administration. [Seal.] 43-3t

R. Ross Perry & Son, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James William Orme, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of October, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of October, 1905. WILLIAM B. ORME, 1623 28th st. N. W.; CHAS. B. BAILEY, 1424 Stoughton street. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,201. Administration. [Seal.] 43-3t

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of LeRoy M. Taylor, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 14th day of November, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN & TRUST CO., Andrew Parker, Treasurer, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. ——. Administration. [Seal.] 43-3t

John S. Alleman, Attorney
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Elizabeth C. Opperman, Deceased.
No. 13,221. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert F. Fox, it is ordered this 27th day October, A. D. 1905, that notice be and hereby is given to Rachael A. Todd (nee Kulp), Hannah E. Caffey, and Hester R. Smith, of Doylestown, Pa.; Michal C. Kulp, of Lynchburg, Va.; Ida Dangler, of Atlantic City, N. J.; William C. Kuhn, of Philadelphia, Pa., and to all others concerned, to appear in said court on Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 43-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices

Blair & Thom, Solicitors
In the Supreme Court of the District of Columbia,
Holding a Special Term in Equity.
In the Matter of the Change of Name of Dallas Corbin, Otherwise Known as Henry Corbin.
Equity, No. 25,751.

Upon consideration of the petition of Dallas Corbin, commonly and generally known as Henry Corbin, this day filed, praying that his name be changed to Henry Corbin, it is, this 18th day of October, A. D. 1905, ordered that notice in said case, in accordance with section 1299 of the Code of Laws of the District of Columbia, be published in the newspapers as follows: On the 13th day of October, 1905, Dallas Corbin, commonly and generally known as Henry Corbin, filed his petition in this court, stating that he had assumed the name of Henry Corbin by mistake; that he had acquired real estate; conducted business as an expressman, and had been for many years generally known as Henry Corbin; and the prayer of said petition is as follows: That this honorable court will pass an order changing your petitioner's name from Dallas Corbin to Henry Corbin and make Henry Corbin his legal name for all intents and purposes. That said notice in said form shall be published once a week for three consecutive weeks in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. True copy. Attest: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. [Seal] 43-3t

William C. Prentiss, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Kunigunda Fedarwisch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of October, 1905. JOHN T. BRANSON, 614 11th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Administration. [Seal.] 43-3t

James F. Bundy, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Allen B. Hamm, Deceased.
No. 13,209. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Bundy, it is ordered this 24th day of October, A. D. 1905, that notice be and hereby is given to **Mary Hamm**, and to all others concerned, to appear in said court on **Monday, the 20th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 43-3t

Irving Williamson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Washington Matthews, Deceased.
No. 13,208. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Caroline Matthews, it is ordered this 24th day of October, A. D. 1905, that notice be and hereby is given to **Alphons Matthews, Clement Matthews, Nicholas Matthews, and Maria Matthews**, and to all others concerned, to appear in said court on **Monday, the 4th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted; provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 43-3t

Legal Notices.

Maurice Kelly, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Anna M. Rochester**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. WM. B. ROCHESTER, 1320 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. [Seal.] 43-3t

A. B. Keefer, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alice Healy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1905. DENNIS L. HEALEY, 1154 5th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,104. Administration. [Seal.] 43-3t

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 24 Defrees street, in the city of Washington, District of Columbia, being lot number seventy-six (76) in Shephard's recorded subdivision of square number six hundred and twenty-three (623), to Christian Loos, for the sum of two thousand ($2,000) dollars cash, less fifty ($50.00) dollars brokerage commission, it is by the court this 20th day of October, 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **20th day of November, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. [Seal] 43-3t

E. L. Gies, Solicitor
In the Supreme Court of the District of Columbia.
Howard F. Sorg, Complainant, v. Ollie A. Sorg et al., Defendants. Equity No. 25,295.

The object of this suit is to secure an absolute divorce. On motion of the complainant, it is, this 19th day of October, A. D. 1905, ordered that the defendant, **Ollie A. Sorg**, cause her appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three (3) consecutive weeks prior to said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 43-3t

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Samuel Jackson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of October, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Boyd Taylor, Asst. Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,144. Administration. [Seal.] 43-3t

Digitized by Google

Legal Notices.

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charles F. Scott**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. MARTHA SCOTT, 1455 Binney st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,188. Administration. [Seal.] 43-3t

Oscar Luckett, Solicitor

In the Supreme Court of the District of Columbia.
James Hyde v. The Unknown Heirs, Alienees, and Devisees of Charles Carter.
No. 25,699. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to that parcel of land situated in the city of Washington, District of Columbia, known as and being lot numbered sixty-four (64) in A. D. Jessup's subdivision of lots in square numbered two hundred and eighteen (218), as per plat recorded in liber R. L. H., folio 236, of the records of the surveyor's office of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein, it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant, by his solicitor, Oscar Luckett, it is this 23d day of October, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Charles Carter**, cause their appearance to be entered herein on or before the first rule day occurring forty days next after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law Reporter at least once in the month of October and three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. oct 27-nov 3,10,17

George F. Collins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Elizabeth A. Rawlings, Deceased.
No. 13,019. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by James S. Rawlings, it is ordered this 23d day of October, A. D. 1905, that notice be and hereby is given to **the unknown heirs and next of kin of said Elizabeth A. Rawlings, deceased**, and to all others concerned, to appear in said court on **Tuesday, the 28th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said re-
[Seal] turn day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

C. C. Clarke, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Robert Duncan Swingle**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1905. EMMA C. SWINGLE, 1443 Huntington Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,231. Administration. [Seal.] 43-3t

Legal Notices.

Ellwood P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Myers, Deceased.
No. 13,210. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellwood P. Morey, executor, it is ordered this 26th day of October, A. D. 1905, that notice be and hereby is given to **Herbert P. Myers, Fannie Hitch, Edward H. Myers, Mary M. Reynolds, Wellborn M. Reynolds, Herbert L. Reynolds, Dudley W. Reynolds, Homer V. Reynolds, Edward H. Reynolds, James M. Walker, Mary C. Walker, William M. Walker, Daniel McI. Walker**, and to all others concerned, to appear in said court on **Thursday, the 30th day of November, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to
[Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

FIFTH INSERTION.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,298.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law
[Seal] Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.
sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 46

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - NOVEMBER 17, 1905

CONTENTS.

Editorial 721
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Supreme Commandery United Order of the Golden Cross, appellant, v. Richard Bernard, et al., executors, etc. 722
The Ohio National Bank of Washington, appellant, v. Henry S. Berlin et al. 726
Legal Notices 730

Conditional Sales—Remedy of Vendor on Refusal of Vendee to Accept Goods.

In the case of Callahan v. Kahlert, on hearing during the present week in Criminal Court No. 2, an important ruling was made by Mr. Justice Gould respecting the remedy to be pursued by the vendor, in cases of conditional sales, where the vendee refuses to accept the goods. It appeared that the defendant entered into an agreement to purchase of the plaintiff a cash register for $265, agreeing to pay for the same in instalments of $25 monthly or cash with a discount. A day or two after making the contract the defendant, for reasons of his own, countermanded the order; but the plaintiff, nevertheless, tendered delivery of the cash register, and on refusal by the defendant to accept it, sued to recover the purchase price. In granting a motion by the defendant for the direction of a verdict in his favor, Mr. Justice Gould held that the plaintiff could not maintain an action to recover the contract price, but that his remedy, if any, was for damages for breach of the contract. He further held that under no circumstances could the plaintiff sue for the contract price until the time for payment of the instalments had expired. Mr. James B. Archer, jr., appeared for the plaintiff, and Mr. Leon Tobriner for the defendant.

Appeals From Justices of the Peace—Right of Appellant to Dismiss Appeal.

An interesting question of practice was decided during the present week by Mr. Justice Gould, holding Criminal Court No. 2, now engaged in the trial of cases on the appeal calendar. In the case of Agnes Grant against James L. Karrick, the defendant appealed from the judgment of the justice of the peace in favor of the plaintiff; and the question presented was as to right of the appellant to dismiss his appeal. In disposing of the matter Mr. Justice Gould stated that the question was one that had never before been decided in this jurisdiction. He held that, under the provisions of the Code of this District regulating the practice on appeals from justices of the peace, the appellee acquires rights which the appellant should not be allowed to divest by a dismissal of the appeal, and his right to do so was denied. Messrs. Millan & Smith appeared for the appellant, and Messrs. Roland & McReynolds for the appellee.

The Present System of Transferring Stock.

A question of considerable interest to lawyers, and especially to bankers and stockholders, was raised by Judge Kennedy, of the Court of Common Pleas, Pittsburg, Pa., recently, in litigation growing out of the failure of the Enterprise National Bank, wherein he questioned the validity of the system, so widely in use at present, of transferring stock by absolute power of attorney. The court was hearing an application for an injunction to restrain the defendants from disposing of or in any wise incumbering a certain certificate of stock which, it was alleged, the complainant had deposited with the bank as collateral for a loan and which had been feloniously taken from the bank and placed in the custody of defendant. It was strongly urged upon the court that the stock had been legally transferred to defendant, and authorities were cited in support of the contention; and it was stated to be the common and almost universal practice for lawyers and others having an irrevocable power of attorney from the original holders to bring stock to banks for sale, such transfers being everywhere accepted and regarded as legal. Judge Kennedy, however, said several times: "I was not aware until this recent flareup that this was the common practice of stock brokers and business men, and I am not convinced that it is sanctioned by the Supreme Court. Such an action is not an actual transfer, having only the power of attorney authorizing the transfer. In my opinion the stock must actually be transferred to another name in the books of the company."

Digitized by Google

A somewhat similar question was presented to the Court of Appeals of this District in the case of National Safe Deposit, Savings and Loan Co. v. Gray, 26 Wash. Law. Rep. 179. In that case it appeared that a stock certificate indorsed by the owner in blank to secure a loan of $500 by a third party, had been pledged to the defendant by such third party to secure a loan made to him at the time, and also as security for a pre-existing indebtedness. It further appeared that the defendant had no notice of any equities existing between the owner and such third party. In holding that the owner had the right to redeem the certificate on payment to defendant of the amount actually loaned at the time it received the pledge, two points were decided by the Court of Appeals, as follows:

1st. That a party in possession of a stock certificate with a written transfer and power of attorney indorsed in blank thereon by the party named as owner on the face of the certificate, may pledge the same for a loan of money made him at the time, where the pledgee takes without notice of any equities existing between the pledger and the owner of the certificate.

2d. In such case the right of the pledgee is based upon the doctrine of equitable estoppel; and the owner is entitled to redeem on payment of the money loaned when the pledge was made, notwithstanding the pledge was also made to cover a pre-existing indebtedness from the pledger to the pledgee, unless the pledgee shows that he changed his position to his prejudice in relation to such pre-existing debts on the faith that the pledger was the real owner of the certificate.

Powers—Duty of Purchaser from Life Tenant.—Where by deed or will the life tenant is invested with power to sell for the purpose of reinvesting the proceeds, the obligation does not devolve on the purchaser to see that the investment is in fact made, where there is no participation by the purchaser in an unauthorized sale. Whitfield v. Burke (Miss.), 38 So. Rep. 550.

Master and Servant—Voluntarily Undertaking Dangerous Work—The injury of a servant while attempting without orders to replace a belt on moving shafting held due solely to his own negligence, which precluded his recovery from the master. Johnson v. Bridgeport Deoxidized Bronze & Metal Co., U. S. C. C. D. Conn. 135 Fed. Rep. 216.

Court of Appeals of the District of Columbia

SUPREME COMMANDERY UNITED ORDER OF THE GOLDEN CROSS, APPELLANT, v. RICHARD BERNARD ET AL., EXECUTORS, ETC.

FRATERNAL BENEFICIAL ASSOCIATIONS; DISCONNECTION FOR NON-PAYMENT OF ASSESSMENTS; REINSTATEMENT; WAIVER.

1. Where the by-laws of a fraternal beneficial association and the contract entered between it and its members provide that forfeiture and disconnection shall follow the non-payment of an assessment, the member failing to pay an assessment within the stipulated time must suffer the penalty.
2. The right given by the by-laws of a fraternal beneficial association to a member who has become disconnected therefrom by his failure to pay an assessment within the time prescribed to be reinstated upon payment of the assessment and such fine as the by-laws may provide, is a right personal to the member, and does not survive to his legal representatives.
3. Where at the time of his death a member of a fraternal beneficial association was disconnected therefrom by reason of his failure to pay an assessment within the time prescribed, the tender by his legal representatives, within the thirty days during which, under the by-laws, the member might have reinstated himself upon payment of the assessment and a fine, of the amount of the assessment was not sufficient to entitle the beneficiary to recover.
4. *Held*, that the evidence was insufficient to show a waiver by the association of terms of the contract as embodied in the certificate.

No. 1544. Decided November 8, 1904.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at law, No. 46,254, entered upon the verdict of a jury in an action on a benefit certificate. Reversed.

Mr. Andrew Wilson and *Mr. N. W. Barksdale* for the appellant.

Mr. I. Q. H. Alward and *Mr. A. D. Bernard* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is by the defendant from a verdict against it by a jury in a suit at law on a benefit certificate issued by it to Joseph Trainor, a member of Halcyon Commandery, a local lodge of the appellant, made payable on its face to Catharine W. Trainor, his wife, and now claimed by the appellees, as his executors, who are also the assignees of the executor and of the next of kin of Catharine W. Trainor.

One of the objects of the order, as disclosed by the record, was to establish a benefit fund from which an agreed sum was to be paid, on the death of a beneficiary member of the order who had complied with all the lawful requirements, to the beneficiary's family, or to be disposed of as such beneficiary might direct. The certificate was issued in January, 1890, and all of the monthly assessments were paid by the beneficiary down to the one due November 1, 1902, which was payable within thirty days thereafter. Trainor, failing to make this payment, became disconnected from the order, but with the right to reinstatement within thirty days after such disconnection by the simple payment of the assessment and such fine as the commandery might by by-laws provide. Before such payment, and on December 2, 1902,

Digitized by Google

Trainor died. His executors, on December 19, 1902, tendered the proper officer the sum of $6.60, the amount due for the November and December assessments, but appellant's officer refused to receive the same.

The record further discloses that Trainor's wife, the beneficiary named in the original certificate, died some time prior to the 13th day of November, 1900, and that Trainor surrendered the benefit certificate and directed that a new certificate be issued to him, naming as beneficiary his late wife's brother, J. Marion Duncan, who was stated to be the executor of his last will and testament. The appellant neglected or refused to comply with Trainor's request, and no change was made in the certificate. It appears, however, that Trainor, in February, 1901, duly executed a will, which was, after his death, duly admitted to probate, wherein he named the appellees as his executors. Trainor also left a letter of instructions to his executors directing them what disposition to make of the proceeds of the benefit certificate in question. The executor of his wife's will duly assigned any right that he might have as such executor in the said benefit certificate, and an assignment of a like interest was made by the next of kin of said deceased wife in and to the proceeds of said benefit certificate.

To the amended declaration a demurrer was filed, and, being overruled, exception was noted and six pleas interposed, to which issue was joined.

Upon the trial of the case, the facts above set forth were shown, and, in addition thereto, it appeared from the testimony of James S. Sharpe, who testified that he was a member of Halcyon Commandery, of Washington, D. C., and the United Order of the Golden Cross, that one W. S. Stetson was the keeper of records of Halcyon Commandery at the time of Joseph Trainor's death, and that he was then dead. He identified the signature of Stetson on the benefit certificate; also on the reverse side in the alleged application for change of beneficiary, and a letter dated December 19, 1902, written to the plaintiffs.

It also appeared from his testimony that Trainor frequently failed to pay his assessments until after he was disconnected, and that he never made formal application for reinstatement or passed a medical examination, these not being required by the by-laws, but he was reinstated by simply paying the assessment. At the close of the testimony, the court submitted the case to the jury, having refused defendant's prayers and granted those submitted by plaintiffs. The jury returned a verdict for the amount of the certificate less the November and December assessments.

Many errors are assigned, among them the incapacity of the plaintiffs to maintain the suit; others are based upon the admission of the Stetson letter above referred to and of certain oral statements made by him, upon admitting into evidence Trainor's letter of instruction to his executors; their written application for the reinstatement of Trainor after his death and the tender of the unpaid assessments by them; the application of Trainor for change of beneficiary; the refusal to grant certain prayers of the defendant, including one for direction of a verdict, and the grant of plaintiff's first prayer.

While we are of the opinion that the executors are competent to maintain the suit, if the right to reinstatement after disconnection was not personal to Trainor, in view of the decision of this court in Berkley v. Harper, 3 Appl. D. C., 308, wherein the charter and by-laws of this appellant were before this court; and while we believe that the error, if any, in the admission of the evidence was not a material error, provided this suit could be maintained, we have reached the conclusion that a correct determination of this appeal can be best reached by considering at the outset certain vital questions raised by the appellant's exceptions to the court's refusal to charge, as requested in its fifth prayer, and its charge, as requested in the appellees' first prayer.

These prayers are as follows:

Appellant's fifth prayer:

"The jury is instructed that if they find that Joseph Trainor was a member of the order and was disconnected for non-payment of dues or assessments, and failed to reinstate himself in thirty days as provided by the by-laws of the order, then they are instructed that the right of reinstatement does not accrue to his personal representatives, and that this tender of assessments by his personal representatives will not entitle his beneficiary to recover.

Appellees' first prayer:

"The plaintiffs pray the court to instruct the jury that if they believe from the evidence that Joseph Trainor, deceased, was the insured under the policy of insurance or benefit certificate offered in evidence in this case, and they shall further find that the said Joseph Trainor in his lifetime designated the plaintiffs Richard Bernard and Alfred D. Bernard executors, the beneficiaries under said policy or benefit certificate by a paper writing offered in evidence as a letter of instructions, wherein the said fund is specially designated and ordered distributed; and shall further find that the sole personal representatives and next of kin as well as the executor of Katherine W. Trainor, the deceased wife of the said Joseph Trainor, assigned all their right, title and interest in said benefit certificate to the plaintiffs, then their verdict shall be for the plaintiffs, provided they shall further find that at the time of the death of the said Joseph Trainor, there was a custom of the local commandery of the defendant to give the member an additional thirty days in which to pay his assessment, and shall further find that during said thirty days' extension, the said assessments then due and payable were tendered to the defendant through its proper local financial secretary."

The crux of the entire case is whether the right to reinstatement after disconnection was personal to Trainor or survived to those who legally represented him.

It appears from the record, as we have stated, that Trainor became ipso facto disconnected from the order by his failure to pay the assessment payable not later than midnight of November 30, 1902. By-law 17, Sec. 3, of the order provides that "A member who fails to pay this '(the monthly)' assessment before midnight of

Digitized by Google

the last day of the month in which it becomes due and payable, shall, ipso facto, stand disconnected from his commandery and from the order, without sentence by the commandery." Section 6 provides: . . . "The disconnection or expulsion of any member shall work an immediate forfeiture of all claims of said disconnected or expelled member and of the beneficiary under his benefit certificate to any participation in the benefit fund." The benefit certificate issued to Trainor also provides that "the suspension, disconnection or expulsion of said member shall work an immediate forfeiture of all claims of said member on the benefit fund of this order, and also a forfeiture of the claims of the beneficiaries named in this certificate."

The parties, therefore, contracted expressly that a disconnection should follow failure to pay any assessment within a given time, and that such disconnection should work a forfeiture. That it is competent to so contract is established by a long line of authorities. Trainor having failed to pay the November assessment was disconnected and so remained at the time of his death. The authorities are quite in accord that, where the by-laws of a fraternal and beneficial society, and the contract entered into between the member and the society provide that forfeiture and disconnection follow the non-payment of an assessment, the member failing to pay within the stipulated time must suffer the penalty. Bacon on Benefit Societies, Sec. 385; Borgraefe v. Knights of Honor, 22 Mo. App. 127; Rood v. Railway Asso., 31 F. R. 62; McDonald v. Mutual Benefit Asso., 29 Hun, 87.

While it is competent for the party for whose benefit the conditions of forfeiture and disconnection are incorporated into the contract, as evidenced by their by-laws and benefit certificate, to waive them, we search the record in vain in this case for any evidence showing that there had at any time been a waiver of the terms of the contract as embodied in the benefit certificate and the by-laws as to disconnection and forfeiture. No where does it appear that the local officers of the commandery have waived or ever attempted to waive the provisions of the contract relative to disconnections, and much less is it shown that the appellant ever gave such authority to the local officers or agents, or had any knowledge that they exercised it. The rule as to the waiver of conditions contained in contracts, and especially of conditions in insurance policies, is authoritatively laid down by the United States Supreme Court in Northern Assurance Co. v. Grand View Building Asso., 183 U. S., 308, where it is stated, after an exhaustive review of the cases in the Federal, State and English courts on the subject, "that where the waiver relied on is an act of an agent, it must be shown, either that the agent had express authority from the company to make the waiver, or that the company subsequently, with knowledge of the facts, ratified the action of the agent." The receipt of overdue assessments, which are paid within the time provided for and prescribed by the by-laws, is not evidence of a waiver of the disconnection, where a party has the absolute right, as in this case, to pay the overdue assessments within thirty days after his disconnection, nor is a failure on the part of the collecting officer or other agent of the local commandery, though as collecting agent he may act for the supreme commandery, to notify the supreme commandery of the disconnection of the member where that disconnection has been overcome by the payment of the overdue assessment. The evidence in this case goes only to the extent of showing that notices of disconnections were not sent to the supreme commandery by the officer of Trainor's commandery upon whom the duty devolved until the 10th of the month following any such disconnection which arose from the failure to pay the assessment on or before midnight of the last day of the preceding month, but that Trainor and other members repeatedly paid, or had paid for them, these overdue assessments, and that their names were not forwarded as having been disconnected. Admitting all this to be true, it does not, in our opinion, amount to a waiver, even had it been authorized by or known to the supreme commandery. If an earlier notice was required by any rule or regulation of the supreme commandery, it would amount to nothing, for the disconnection followed the failure to pay the assessment, and notice thereof to the supreme commandery made it no more effectual. These disconnections generally amounted to nothing and evidently had no terrors for the members of Halcyon Commandery, and probably not for the members of other commanderies, the reason for this being, as stated, that the disconnected member could be reinstated at any time within thirty days from the date of his disconnection by simply paying the overdue assessment and any fine that the commandery might by by-law fix. No medical examination was required, nor was it necessary to make any formal application for restoration. By-law 12, Sec. 3, provides for this:

"Persons who have been members of the order, but are disconnected for the non-payment of dues or assessments, desiring again to obtain membership, can do so within thirty days after their disconnection on payment of the arrears for which they were disconnected and such a fine as the commandery may by by-laws provide."

Therefore, every member who had not been disconnected for more than thirty days had the absolute right, at the meetings of the commandery held on the 10th day of each month, to pay his overdue assessment, and the collecting agent for the commandery, in accepting such payments, exercised no discretion, but was compelled to receive them, and in receiving them, he did not waive the prior disconnection of a member. The disconnection ended simply by the payment of the overdue assessment. The payment, ipso facto, worked a restoration to membership as automatically as a failure to pay the assessment at the last hour of grace worked a disconnection. Trainor was disconnected at the hour of his death, though he then had an absolute right to reinstatement by simply paying the overdue assessment, and, this being the fact, it brings us to the real question to be determined, i. e., whether that right survived. If this question be answered in the negative, the court below was in error in refusing the appellant's fifth prayer and in granting appellees' first prayer.

While there is some conflict of authority on

Digitized by Google

this point, the weight of authority is to the effect that such right of reinstatement does not survive, but, in these fraternal and beneficial orders, is personal to the members. The penalty of disconnection is probably the most effective aid to enforce the payment of assessments. The payment of these assessments is absolutely essential to the existence of the order. As was said in Modern Woodmen of America v. Tevis, 117 F. R. 369, "Fraternal insurance is temporary insurance—insurance from the maturity of one assessment to the maturity of another—and stipulations to insure promptitude in the payment of the assessments constitutes both the substance and essence of contracts for it." It will be pertinent to refer to a few of the cases sustaining the proposition that this right of reinstatement does not survive to the representative of the deceased member. Yoe v. Howard Benevolent Asso., 63 Md. 86, the opinion in which was written by the late chief justice of this court, says:

"The obligation to pay the death assessment is personal to the member, and it must, according to the laws of the article referred to, be paid in his lifetime, for if he died before payment, no representative of his is authorized to pay for him, in order to entitle the intended beneficiary to receive the mortuary aid from the association. The payment is to be made by the member as such, and in case of his default he ceases to be a member, and he forfeits all claim upon the association. The member failing in his lifetime to make payment, and the thirty days having expired before his death, and no one being authorized to make it after his death, to hold the association liable, notwithstanding no payment of the assessment had been made, would be to disregard the mutuality of members, as well as do violence to the terms and plain intent of the article of the association which we have quoted. The thirty days' grace was for his convenience and accommodation, and though he had the full period of thirty days within which he could make the payment, yet if he thought proper to delay it to the last hour of that period, the delay was at his own risk, and not that of the association. Here the full thirty days had expired without payment, and the party died two days thereafter, and that being the case, he was not a member when he died, having by his default lost his membership and all the benefits appertaining thereto."

Carlson v. Supreme Council, 115 Cal. 466, is a case very similar to the one now under consideration. The insured failed to pay a certain assessment, and for such failure, under the by-laws, stood suspended. He had the right, as in this case, to be reinstated within a certain time by payment of past-due assessments. He died before the expiration of the time when, if living, he could have paid the assessments and been reinstated. The beneficiary tendered the assessments due the association, but they were refused upon the ground that a dead man could not be reinstated. It was urged that, as the insured died within the time within which he was entitled to pay the back assessments and be restored to membership, this right of reinstatement passed to his legal representative, notwithstanding his disconnection. The court, however, held that the forfeiture took place as soon as there was failure to pay the assessment, and that, though, had he survived, he would have had the right to pay the arrears within sixty days, such payment would not have defeated the forfeiture, but merely have ended it, and that this option was personal to himself. The opinion quotes from Niblack on Benefit Societies, section 299, to the effect that:

"When a member has been suspended for non-payment of an assessment and he has neglected during his lifetime to secure his reinstatement in accordance with the terms of his certificate by paying arrearages while in good health and within a certain time, his restoration to membership can not be effected after his death by payment by another person, within the time limit, of the sum due from him at the time of his death."

To the same effect are the cases of Supreme Lodge v. Jones, 69 N. E., 718, and Maginnis v. Aid Asso., 43 La. Ann. 1136.

The case of Dennis v. Mass. Benefit Asso., 120 N. Y. 496, cited by the appellees in support of their contention that the right to reinstatement survives, is not in point, and may be reconciled with the cases holding to the contrary. The opinion in that case expressly states:

"If the certificate in question had provided without qualification that for a failure to pay the assessment within thirty days after the mailing of a notice thereof by the defendant it should lapse and be void, its invalidity would be established without dispute."

Furthermore, the facts are quite different from those in the case at bar.

We conclude that the right to reinstatement was personal to Trainor and did not survive to his legal representatives, and that therefore there was error in the judgment rendered by the Supreme Court of the District of Columbia in the premises, and that the judgment should be reversed with costs and the cause remanded for further proceedings not inconsistent with this opinion. And it is so ordered.

Bankruptcy—Extension of Time for Application for Discharge.—A bankrupt held not entitled to an extension of time for the filing of an application for a discharge within the court's discretion, under bankruptcy act, chapter 541, section 14. In re Lewin, U. S. D. C. (W. D. Tex.) 135 Fed. Rep. 252.

Railroads—Failure to Give Warning at Crossing.—The presumption that the servants of a railroad performed their duty of ringing the bell and sounding the whistle at a crossing does not obtain, where there is evidence that such duty was not performed. Roberts v. Wabash R. Co., Mo., 87 S. W. Rep. 601.

Cancellation of Instruments—Basis of Equitable Relief.—A federal court of equity has jurisdiction of a suit for the cancellation of a promissory note alleged to have been obtained from complainant by fraud, the remedy at law not being plain, adequate, and complete. Manning v. Berdan, U. S. C. C., D. (N. J.), 135 Fed. Rep 159.

Digitized by Google

Court of Appeals of the District of Columbia.

THE OHIO NATIONAL BANK OF WASHINGTON, APPELLANT,

v.

HENRY S. BERLIN ET AL.

JUDGMENTS AND DECREES, LIEN OF, ON EQUITABLE INTERESTS; SEC. 1214, CODE D. C., CONSTRUED; DEEDS; DEFECTIVE ACKNOWLEDGMENT; CREDITORS' BILL; LIEN ACQUIRED BY; PRIORITY OVER UNRECORDED DEED.

1. Section 1214, Code D. C., providing that judgments, etc., shall be a lien upon the equitable as well as the legal interests of the defendants bound thereby from the date when the same shall be rendered, operates only in favor of judgments and decrees rendered after the going into effect of the Code; and does not operate in favor of judgments and decrees in existence at the time the Code went into effect.
2. A certificate of acknowledgment of a deed is fatally defective under section 499, Code D. C., as originally enacted, where it does not appear that the grantor was personally known to the officer, or that his identity had been proved by the oath of credible witnesses, and where the instrument is not identified by the recital of its date; and under such circumstances the instrument is not entitled to record, and its record is of no effect as constructive notice.
3. The filing of a bill in equity to reach an equitable interest of a judgment debtor and subject it to the satisfaction of the judgment, gives the judgment creditor a lien on the property sought to be reached by the bill.
4. Under such circumstances, the judgment creditor is a "creditor" within the meaning of section 499, Code D. C., providing that as to creditors, etc., a deed shall take effect only from the time of its delivery for record, and is entitled to priority over a grantee or assignee from the judgment debtor whose deed, although dated prior to the filing of the bill in equity, was not filed for record until thirteen days thereafter, and after service of process had on the judgment debtor.

No. 1597. Decided November 8, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,318, dismissing a bill to subject an equitable interest to the lien of a judgment at law. Reversed.

Mr. Thomas C. Taylor and *Mr. Jesse C. Adkins* for the appellant.

Mr. C. F. Carusi for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the court.

1. The appellant appeals from a decree dismissing its bill filed to subject the equitable interest of Henry S. Berlin in certain lands to the lien of a judgment. The original bill was filed May 13, 1902, and on October 29, 1902, a supplemental bill was filed making one George A. Green a party defendant, as the holder of an assignment of the interest aforesaid of Henry S. Berlin, unrecorded at the time of filing the original bill.

From bill and answers, together with a stipulation reciting certain facts as agreed upon, on which the cause was submitted, the following facts appear:

(1) On May 13, 1901, the Ohio National Bank recovered a judgment against Henry S. Berlin and Armat Stoddart, in the Supreme Court of the District, for the sum of $426, with certain interest thereon, and costs of protest, besides costs of suit. Execution issued thereon January 29, 1902, was returned March 31, 1902, nulla bona, and the judgment remains unsatisfied.

(2) The will of William Berlin dated January 5, 1899, and probated about September 25, 1901, vests an interest in the lands of the testator in defendant, Henry S. Berlin. Said lands were subject to a deed in trust executed by said testator October 29, 1891, to secure the payment of a note, part of which remains unpaid. The deed in trust remaining in force, the trustees therein are made parties defendant; but no attack is made upon the validity of the indebtedness, to the extent that it remains unpaid.

(3) The sealed instrument under which George A. Green claims bears date May 8, 1902. It purports to convey to him all of the interest of Henry S. Berlin, under the will of William Berlin, for a consideration of $900. The acknowledgment of this instrument reads as follows:

"District of Columbia, ss:

On this eighth day of May in the year of our Lord, 1902, before me, the subscriber, a notary public in and for the District aforesaid, personally appeared Henry S. Berlin, of Washington, District of Columbia, and made oath in due form of law that the above is his act and signature, and that he has a perfect right to sell, and by this act he has sold the same to George A. Green. HELEN E. PARKER,

(Notarial seal.) Notary Public."

(4) This assignment was filed for record in the office of the recorder of deeds for the District of Columbia, and recorded on May 26, 1902, at 10.50 o'clock a. m.

2. The first contention of the appellant is that its judgment became a lien upon the equitable estate of the judgment debtor, Henry S. Berlin, by virtue of section 1214 of the Code, which went into effect from and after January 1, 1902. So much of that section as is important is here recited: "Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered . . . shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, . . . in any lands, tenements, or hereditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent; *but such liens on equitable interest shall be enforced by a bill in equity.*"

(1) The contention of the appellant does not go to the extent of claiming that the lien given by this section relates back to and operates from the date of a judgment rendered prior to its enactment. And clearly it does not. It is the universally accepted rule in the interpretation of statutes, that they operate prospectively, in the absence of a contrary intention either expressed or necessarily to be implied.

(2) The question remaining, then, is, whether the lien operates, from and after the passage of the Code, in favor of all judgments then in existence, as well as in favor of those thereafter rendered. The literal meaning of the words "*from the date when the same shall be rendered,*" limits the lien to future judgments. To hold that they give a lien to prior judgments from *the date of the enactment*, is contrary to the grammatical construction and the plain, natural import of the words. There is no other language in the section warranting an inference

Digitized by Google

that those words were intended to have any other than their literal and natural meaning.

"To get at the thought or meaning expressed in a statute, a contract, or a constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. Lake Co. v. Rollins, 130 U. S. 662, 670.

Practically the only ground upon which the argument for going beyond the letter of the statute rests is the want of any apparent reason why the legislature should have made a distinction between future judgments and existing ones. Undoubtedly, the lien given by the statute might wisely and justly have been extended to both classes of judgments, but the courts have no power to interpolate words necessary to accomplish that end. They have nothing to do with the motives actuating the legislature.

To a like argument in a case of great hardship, the Supreme Court of the United States, in an early case, made the following reply: "This, it must be admitted, when we consider the mischief which the law was probably intended to remedy, is a somewhat technical construction of the act; and cases may be found where courts have construed a statute most liberally to effectuate the remedy; but where the language of the act is explicit, there is great danger in departing from the words used to give an effect to the law which may be supposed to have been designed by the legislature. Where the language of the act is not clear, and is of doubtful construction, a court may well look at every part of the statute—at its title, and the mischief intended to be remedied in carrying it into effect. But it is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.

"We are unable to say why the benefits of this statute were given to those who held under deeds proved by the subscribing witnesses and withheld from those whose deeds were proved by the acknowledgment of the grantor. In most cases, if not in all, proof by acknowledgment would be deemed more satisfactory than by witnesses, but the legislature having made a distinction between the cases, whether it was intentional or not, reasonable or unreasonable, the courts are bound by the clearly expressed language of the act." Denn v. Reid, 10 Peters, 524, 527. The distinction above referred to consisted in clearly stating the one kind of proof without naming the others. In construing an important statute in a recent case, the same court said: "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have been specifically provided for, justify any judicial addition to the letter of the statute." U. S. v. Goldenberg, 168 U. S. 95, 102.

The appellant's contention is supported by a decision of the Supreme Court of Texas giving interpretation to a statute closely resembling ours, in which it was held that the lien applied to prior as well as to subsequent judgments, the majority of the court declaring that the words "shall be" should be interpreted as if reading "shall have been."

Without pausing to consider the peculiar conditions in that State arising from former legislation relating to judgment liens, and the operation of stay-laws enacted during and immediately after the war between the States, as affording grounds for this construction, it is sufficient to say that if it was justified by those conditions, they do not prevail here; and that, if the letter of the statute was not followed because it would result in a discrimination between the two classes of judgments, then the rule of construction is opposed to that laid down by the Supreme Court of the United States in the cases above cited. In another case relied on by the appellant, there is considerable difference between the statute construed and our section 1214. Woods v. Mains, 1 Green (Iowa), 275, 292.

3. The next question to be considered is as to the operation of section 499 upon the rights of the parties. As enacted January 1, 1902, it reads as follows: "Sec. 499. When deeds to take effect.—Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as aforesaid and delivered to the person in whose favor the same is executed, shall be held to take effect and pass the title in the property conveyed to said person from the date of the acknowledgment, provided the same be recorded within three months from said date, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds to be recorded."

This section controls the operation of the deed in this case, though by amendment of June 30, 1902, it has been materially altered.

(1) Since the submission of the case, the appellant, by motion for leave to file a supplemental brief, has, for the first time, raised the question of the sufficiency of the proof of the acknowledgment of the execution of the deed to Green to entitle the same to be recorded. The character of this certificate, however, had not been overlooked. Possibly, though we are not to be understood as so deciding, the recital of the acknowledgment hereinbefore copied may answer as a certificate, though omitting the formal words, "do hereby certify" as recited in the statutory form. Code, section 498. Like-

Digitized by Google

wise, the omission of the formal statement that the grantor acknowledged "the same to be his act and deed," and of the notary public to attest the certificate formally as given under her hand and seal, may be passed. The certificate is, however, fatally defective for the following material omissions: It does not appear that the grantor was personally known to the officer or that his identity had been proved by the oath of credible witnesses; nor was the instrument identified by the recital of its date. The record of the instrument, therefore, was unauthorized and of no effect as constructive notice. Lynch v. Murphy, 161 U. S. 247, 253. Its effect as notice, however, is of no significance in the present case.

To go further and undertake to determine the effect of this want of acknowledgment and of effective record, upon the passage of title to Green, would involve the determination whether the word "creditors," as used in section 499, embraces all creditors, whether prior or subsequent to the execution of the unacknowledged and unrecorded deed, or those whose claims were contracted after the execution of the instrument, with or without actual knowledge of its contents; or only those creditors who may have acquired some recognizable lien thereafter, with or without such actual knowledge; and also whether, through failure of acknowledgment and record, it even took effect as to the grantor. These are questions concerning which there has been much contrariety of decision in the States whose statutes have in view the same general object; and, under the circumstances, we prefer to pass them and rest our decision on another ground, sufficient for all the purposes of this case, upon which we have had the benefit of oral, as well as printed argument.

(2) In the consideration of this point, the necessary facts are these: The bill to obtain satisfaction of the judgment and of the equitable interest of the judgment debtor was filed May 13, 1902. The deed conveying that interest to the defendant Green, of which complainant had no notice, was executed and delivered May 8, 1902. The actual recordation of this deed, though ineffectual in law, did not take place until May 26, 1902, after the service of process upon Henry S. Berlin, the maker thereof.

Execution upon complainant's judgment could not be levied upon the equitable estate of the judgment debtor, and had been returned nulla bona, prior to filing of the bill. The only remedy for the satisfaction of the judgment was, therefore, in equity. Morsell v. Bank, 91 U. S. 357. Even the liens now given upon such interests to judgments rendered since January 1, 1902, by section 1214, can only be enforced by bill in equity. No execution could be had at law, because the courts of law refused recognition to such interests. To supply this defect, or rather inadequacy, of the legal remedy, the remedy in equity was devised by way of an equitable execution. Freedman's Sav. & Tr. Co. v. Earle, 110 U. S. 710. A concise history of the origin and development of the equitable remedy is given in the opinion of Mr. Justice Matthews in that case, who says (p. 717): "The filing of the bill, in cases of equitable execution, is the beginning of executing it." This beginning of execution, as he says (p. 717), by "the filing of a bill by an execution creditor to subject the equity of the debtor in his lifetime, created a lien and gave him a legal preference." And this lien, he further says (p. 720), "is given by the court in the exercise of its jurisdiction to entertain the bill and to grant the relief prayed for."

The filing of the bill necessarily gives the judgment creditor the same right of preference by way of this special lien as is acquired by the levy of an execution upon the legal estate of the judgment debtor. The doctrine of the case cited has frequently been applied in this court. Gottschalk Co. v. Live Oak Distillery Co., 7 App. D. C. 169, 174: 23 Wash. Law Rep. 795; Fulton v. Fletcher, 12 App. D. C. 1, 21: 26 Wash. Law Rep. 52; Babington v. Washington Brewery Co., 13 App. D. C. 527, 531: 27 Wash. Law Rep. 22; May v. Bryan, 17 App. D. C. 392, 393: 28 Wash. Law Rep. 618. In Fulton v. Fletcher, supra, it was said: "The court did not err in charging the jury that the plaintiff acquired a lien upon the property described in the bill. It was an equitable interest that could not be reached by execution, and the filing of the bill was the commencement of the lien." And in May v. Bryan, supra, it was said: "The filing of the bill, and the notification issued for appearance thereto, created a lien on the equitable estate or assets of the judgment debtor, described in the bill and the amendments thereto; and no subsequent disposition of the estate or of those assets could displace or defeat that lien."

None of the foregoing cases involved the particular question here raised between the plaintiff in such a proceeding and an assignee or grantee of the equitable interest under a conveyance thereof, whether made after or before (but without registration) the filing of the bill. But they do affirm the creation of a special lien thereby; and the holder thereof is a creditor within the meaning of section 499 under even the most limited construction that has ever been given by any court to a similar statute. Without citing the conflicting decisions under such statutes, it may be said that they are divided into three classes. The first class embraces all ordinary creditors within the comprehension of the statute. Another excludes all but creditors whose claims arose between the date of the conveyance and its regular filing for record. The third excludes all save those who, before the filing for record, have acquired or fastened a lien upon the property. The judgment creditor having brought himself within this most limited class of creditors is entitled to the enforcement of his judgment by a decree for the sale of the equitable interest described in the bill as against the right of the defendant Green, who did not undertake to record his conveyance until after the bill had been filed.

For the error pointed out, the decree will be reversed with costs and the cause remanded, with directions to enter a final decree for the complainant in accordance with the prayers of his bill.

Reversed.

Legal blanks of every description for sale at this office.

Digitized by Google

Strike—Conspiracy—Picketing.

The Supreme Court of Indiana held, in the case of the Karges Furniture Company v. Amalgamated Wood Workers' Local Union, No. 131, et al., that an action can not be maintained under the law of Indiana against an unincorporated association not professing nor assuming to act as a corporation, but only against the individuals composing it; that a combination of persons to act in concert is not necessarily an unlawful conspiracy; that proof that 600 members of a labor union by majority vote inaugurated a strike, and in concert attempted by persuasion, but peaceably, to induce all the workmen at plaintiff's factory to quit work, and that certain individuals, part of whom were members of the union, used violence and abuse to induce non-union men to stop working for the plaintiff, but were discountenanced in so doing by the union as a body, and that plaintiff's business thereby suffered loss, did not establish a conspiracy by members of the union to do an unlawful act, and that peaceable picketing by strikers was not unlawful.

Sale—Sample—Acceptance.

In the case of Kupfer v. Michigan Clothing Company, recently decided by the Supreme Court of Michigan, it appeared that the defendant ordered cloth of the plaintiffs at different times, and that a portion of the goods made up were returned by its customers as unsatisfactory on account of the poor quality of the cloth. The defendant returned the cloth on hand to the plaintiff without examination. The cloth was ordered from samples. The court held that if the cloth ordered conformed in quality to the samples from which it was ordered it was the defendant's duty to accept it; that the defendant could not establish his right to refuse acceptance merely by showing that other goods received under similar orders were unsatisfactory, and that the defendant's act in ordering the cloth reshipped to it after returning the goods to the plaintiff amounted to an acceptance.

Contract — Nonperformance — Recovery of Consideration—Rescission.—In Timmerman v. Stanley, decided by the Supreme Court of Georgia in August, 1905 (51 S. E., 760), the general rule was laid down that where one party asserts the right to rescind a contract for nonperformance by the other of his covenant, the party seeking rescission must restore or tender back to the other party what has been received from him, so as to restore the parties to the condition in which they were before the contract was made.

It was held, however, that this rule has no application to a case where one agrees to teach another a certain thing, and, after beginning the course of instruction, refuses to proceed further, whereupon the other party treats the contract as rescinded, and brings suit to recover the amount which he has paid under the agreement. The court said in part:

It is contended, in the brief of counsel for the defendant in error, that there can be no recovery of the amount paid, because, in order to rescind the contract, the plaintiff must restore the status, and must tender back to the defendant what he has received from him, and that this can not be done in the present case (Civ. Code 1895, sec. 3712). This is a general rule where one party to the contract has received goods, money or other thing of value, which is capable of being returned to the other party. But in a contract like that involved in the present case, where a person agrees to teach another a certain thing, or to qualify him for a certain position, if he gives the student some instruction and then refuses to complete his contract, there would be no possible way by which such instruction as he had given could be returned or tendered back to him; nor is the other party required to estimate value for what has been done and tender such amount. He can not hold on to the amount paid, refuse to proceed with the contract, and defend against an action to recover the price paid on the ground that the plaintiff had not tendered back to him his instruction, and could not restore him to the status quo. He can not by his own conduct place himself in a situation where restoration is impossible, repudiate the contract and set up this situation as a defense to a suit for the amount paid. If he abandons the contract, he should not complain that the other party is willing to treat it as rescinded.

Corporations—Rights of Attaching Creditors of Foreign Corporation.—A receiver of a foreign corporation, appointed in another State, cannot defeat an attachment or garnishment levied by a resident creditor on assets within this State before the receiver acquires possession. Choctaw Coal & Mining Co. v. Williams-Echols Dry Goods Co. (Ark.), 87 S. W. Rep. 632.

Railroads—Injury to Person on Track.—Persons walking in the middle of a railroad track on a dark night, taking no precaution for their safety, can not throw upon the trainmen the entire duty of securing the same. White v. Illinois Cent. R. Co., La., 38 So. Rep. 574.

Master and Servant—Safe Appliances.—A painter, whose duty it is, according to the custom of the trade, to inspect scaffolds, need only exercise ordinary care in such inspection. George Weidemann Brewing Co. v. Wood (Ky.), 87 S. W. Rep. 772.

Master and Servant—Wrongful Death of Brakeman.—In an action against a railroad for the death of a brakeman, deceased held entitled to rely on assurance of warning of danger given him by superintendent of freight train. Edgar v. New York, N. H. & H. R. Co. (Mass.), 74 N. E. Rep. 911.

Mechanics' Liens—Property Subject.—Where labor and materials were furnished under a single contract for the improvement of three houses, each separate lot held liable for the entire debt. Guarantee Savings, Loan and Invest. Co. v. Cash (Tex.), 87 S. W. Rep. 749.

Digitized by Google

Bills and Notes—Bona Fide Holders.—Negotiable notes, acquired in good faith for value before maturity, are not vitiated in the hands of the holder by subsequent information of their infirmity.—Hillard v. Taylor, (La.) 38 So. Rep. 594.

Bills and Notes—Negotiability.—A provision that, if the interest be not paid semiannually, it shall become principal and bear the same rate of interest, does not make the note non-negotiable. Brown v. Vossen (Mo.), 87 S. W. Rep. 577.

Adverse Possession—Land Purchased at Tax Sale by Wife.—A wife purchasing land at a tax sale in possession of her husband as tenant for life held not entitled to acquire a title by adverse possession. Blair v. Johnson (Ill.), 74 N. E. Rep. 747.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,
LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Jno. Ridout, Attorney

In the Supreme Court of the District of Columbia, Frank J. Dieudonne, Plaintiff, v. Liquid Carbonic Company, Defendant.
At Law, No. 47,944.

The object of this suit is to recover damages for breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 27th day of October, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once a week for three successive weeks before the return day of this order. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. [Seal] 46-3t

Legal Notices.

Wm. Herbert Smith, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert H. Montgomery, Deceased.
No. 13,217. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia A. Montgomery, it is ordered this 13th day of November, A. D. 1905, that notice be and hereby is given to **Rachel Elliot, Susan Oakes, Anne Montgomery, and Sarah E. Rogers,** and to all others concerned, to appear in said court on **the 18th day of December, 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

Lancaster & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Frazier, Deceased.
No. 13,256. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Laura C. Frazier, it is ordered this 15th day of November, A. D. 1905, that notice be and hereby is given to **John Frazier, Ephraim Frazier, and Harry Frazier,** and to all others concerned, to appear in said court on **Monday, the 18th day of December, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 917 O street northwest, in the city of Washington, District of Columbia, being lot numbered nine (9) in Samuel Redfern's subdivision of square numbered three hundred and sixty-six (366), to the Deaconess Board of the District Woman's Home Missionary Society of the Baltimore Conference, a body corporate, of which said executor is one of the trustees, for sixty-five hundred ($6,500) dollars net, all cash, it is, by the court, this 15th day of November, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **15th day of December, 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Jno. Ridout, Attorney

In the Supreme Court of the District of Columbia. Henry H. Meyer, Plaintiff v. The Standard Stone Manufacturing Company, Defendant.
At Law, No. 47,935.

The object of this suit is to recover an amount due to plaintiff from defendant on open account and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this **27th day of October, 1905,** ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once a week for three successive weeks before the return day of this order. [Seal] By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. 46-3t

Digitized by Google

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Letts**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-3t

Lorenzo A. Bailey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael Flaherty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of November, A.D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1905. BRIDGET FLAHERTY, 1300 Del. ave, S.W., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,280. Administration. [Seal.] 46-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
In re Estate of Susan Perry, Deceased.
No. 10,180. Administration.

It appearing to the court that John T. Wood, executor, has reported a bid of twenty-five dollars ($25.00) each for lots 1, 2, and 3, in block 7, section 3, in Burrville, District of Columbia, from William B. Johnson, it is this 16th day of November, 1905, ordered that the sale of said lots to William B Johnson at the above price be ratified and confirmed, unless cause to the contrary be shown on or before the **16th day of December, 1905**; provided a copy of this order be published in the Washington Law Reporter once a week for each of three [Seal] successive weeks before said last-named day. By the court: WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Harry G. Kimball, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c.t.a. on the estate of **Howard Markward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of November, 1905. GEORGE H. MARKWARD, 609 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,268. Administration. [Seal.] 46-3t

Robinson White, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles White**, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of November, 1905. JANE M. WHITE, care of Robinson White; CHAS. WHITE, Jr., 418 O st. S. W.; JENNIE W. FUGITT, 109 11th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13271. Administration. [Seal.] 46-3t

Legal Notices.

B. F. Louchs, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Estate of Ephraim A. Greenough, Deceased.
No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court the sale of sublot No. 16 in square No 78., improved by house No. 328 Massachusetts avenue n. e., in the city of Washington, District of Columbia, to Charles E. Rice for the sum of five thousand five hundred and forty-five dollars ($5,545), subject to a deed of trust for five thousand dollars and sixty-two dollars and fifty cents interest thereon, it is, this 10th day of November, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the **11th day of December, 1905**. Provided that a copy of this order be published in the [Seal] Washington Law Reporter once a week for three successive weeks before said last-mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

William D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Aaron Stern**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 5th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,394. Adm. [Seal.] 46-3t

Wilson & Barksdale, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Kate Ross, Deceased.
Probate No. 13244.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of Kate Ross and for letters testamentary, by Frank E. Gibson, as executor, it is this 10th day of November, 1905, ordered that **John W. Ross, Charles Riddle, Richard Anderson, William Anderson, Mary E. Denny, —— Smith, and the unknown heirs at law and next of kin of said Kate Ross**, and all others concerned, appear in said court on **Thursday, the 14th day of December, 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks [Seal] before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Carl Hugo Ziemann**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 26th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 13th day of November, 1905. LEON TOBRINER, AUGUST DAETZ, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,314. Administration. [Seal.] 46-3t

Digitized by Google

Legal Notices.

Leon Tobriner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Charles C. Walter**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 8th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of November, 1905. LEON TOBRINER, LIZZIE M. WALTER, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,223. Administration. [Seal.] 46-3t

---

William G. Henderson, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Mary A. M. Smith, Deceased.

Administration. No. 12,145.

Henry Calver, executor, having reported to the court the sale of a certain piece of property belonging to the estate of the decedent, said piece of property being known as premises No. 1248 23d st. N. W., in the city of Washington, District of Columbia, and being lot D, in square 36, as designated in the ground plat or plan of the said city, together with improvements thereon, to James B. Wimer, for six hundred dollars ($600); it is, by this court, ordered and decreed that the sale be ratified and confirmed, unless cause to the contrary be shown on or before the **11th day of December, 1905**; provided that a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. [Seal] 46-3t

---

SECOND INSERTION.

T. Percy Myers, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John A. Barber**, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of November, 1905. J. WILLIAM HENRY, 1319 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,255. Administration. [Seal.] 45-3t

---

Andrew B. Duvall, E. H. Thomas, Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Snowden W. Robinson, Complainant, v. Alvira Robinson, Sewell R. Duley et al., Defendants.

Equity No. 25,770. Doc. 57.

The object of this suit is to appoint a new trustee for the estate of James S. Robinson, deceased. On motion of the complainant, it is this 9th day of November, 1905, ordered that the defendants, **Mary A. Collins and Mary Edna Collins, infant**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal.] 45-3t

Legal Notices.

Ellwood O. Wagenhorst, Solicitor

In the Supreme Court of the District of Columbia.

Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedian, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, **Susan E. Hedian**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D, 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, **Susan E. Hedian**, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] nov. 10, 17, 24; dec. 1.

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia,

Alexander B. Hagner, in His Own Right, and as Executor, et al., Complainants, v. John H. Walter, Trustee, et al., Defendants. No. 25,589. Equity Docket 57.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, Washington, D. C., beginning for said part of said lot at the northeast corner of lot 9, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 9th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —Brown, — Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] nov 10, 17, 24; dec 2, 9; jan 5, 12.

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Digitized by Google

Legal Notices.

J. H. Lichliter, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of John W. Smith, Deceased.
No. 18,238. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Emma J. Smith, widow of said deceased, it is ordered, this 8th day of November, A. D. 1905, that notice be and hereby is given to **Thomas Leander Smith, Della Bell Smith, Dessa Bell Smith, Etta Alma Smith** (infant), **Lotus Mae Smith** (infant), **La Fayette P. Ripley, Leffingwell D. Ripley, Frank N. Ripley, Elizabeth J. Ripley, Edna (or Etna) V. Harwood, Grace Kaufer, Ida B. Berger, and Arthur S. Thompson**, all non-residents of the District of Columbia, and to all others concerned, to appear in said court on **Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 45-3t

B. H. Loucks, Solicitor

In the Supreme Court of the District of Columbia,
Holding a Court of Equity.
In the Matter of Composite Brick Manufacturing Co., a Corporation. Equity. No. —.

It appearing to the court that a petition has been filed herein praying that the Composite Brick Manufacturing Company, a corporation, organized under the laws of the District of Columbia, be dissolved as provided by section 768 of the Code of the said District and for other relief, it is, this 7th day of November, ordered that notice of this application be given to all persons concerned and requiring all persons concerned to appear in this court and show cause, if any they have, on the **11th day of December, 1905**, why the said corporation should not be dissolved, a receiver appointed to take charge of the assets of said corporation, and for general relief. It is further ordered that this order be published in The Washington Law Reporter and in The Washington Post once a week for three successive weeks, the first insertion to be not less than one month before said return day. It is further ordered that a copy of this order be mailed to all stockholders, bondholders, and creditors whose names appear in said petition thirty days before said return day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 45-3t

Berry & Minor, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
William Peyton Tucker and Nathaniel Beverley Tucker, Complainants, v. Henry W. Bartol, E. Welsh Ashford, and Erwin Cyrus Brainerd, Respondents. Equity, No. 25,746.

The object of this suit is to substitute trustees in the place and stead of E. Welsh Ashford and Erwin Cyrus Baumgras (now Erwin Cyrus Brainerd), under a deed of trust dated September 13, 1900, and recorded in liber 2520 at page 118 of the land records of the District of Columbia, from William Peyton Tucker and Nathaniel Beverley Tucker and wife to E. Welsh Ashford and Erwin C. Baumgras (now Erwin Cyrus Brainerd), trustees, conveying lot 50 in Frank L. Hanvey's subdivision of lot 8 in block 34, "Columbia Heights," in the city of Washington, District of Columbia. On motion of the complainants, by their solicitors, Berry & Minor, and it appearing to the court that the summons issued herein against the respondent, E. Welsh Ashford, has been returned "not to be found," and the non-residence of the said respondent having been proved to the satisfaction of the court, it is, this 8th day of November, 1905, ordered that the said respondent, **E. Welsh Ashford**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 45-3t

Legal Notices.

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph E. McDonald**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of November, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. JESSIE C. McDONALD, Colorado Building, Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,236. Administration. [Seal.] 45-3t

Samuel Maddox, Solicitor

In the Supreme Court of the District of Columbia.
Hattie Hicks et al., Complainants, v. Margaret R. Trotter et al., Defendants. Equity No. 23,164.

Upon consideration of the report of H. Prescott Gatley, trustee, herein filed, it is this 6th day of November, A. D. 1905, ordered that said trustee be, and he is herby, authorized and directed to sell to Florence A. DeLong lot 20 of Daniel Birtwell's subdivision of lot 10, block 13, Rosedale and Isherwood, for the sum of $860, cash; and that said sale, so made, shall be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of December, A. D. 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 45-3t

George C. Gertman, Solicitor

In the Supreme Court of the District of Columbia.
The Atkinson and Ballard Company, a Corporation, Complainant, v. The Unknown Heirs and Devisees of Benjamin Stoddert et al., Defendants.
Equity. No. 25,714. Doc. 57.

The object of this suit is to obtain a decree perfecting and establishing of record the complete title of the complainant to lots numbered twenty-three (23) and twenty-four (24) in Lloyd P. Pumphrey's subdivision of certain lots in square numbered sixty (60), in the city of Washington, in said District, as described in the bill of complaint. On motion of the complainant, by George C. Gertman, its solicitor, it is by the court, this 9th day of November, 1905, ordered that the defendants, the unknown heirs and devisees of Benjamin Stoddert; George Scott, executor, and in his own right; Jonathan Scholfield (of Issacker), executor, and in his own right; Mahlon Scholfield; Benjamin Waters, trustee, and in his own right; Sarah Talbot, Ann Dobey, John Balderson, Eliza Cowen, Lucretia Edmonston, John Woods, Rachael A. Levering, Joseph Scholfield, Hannah Scholfield, Sarah Scholfield, Lewis Scholfield, William Scholfield (of Mahlon); Elizabeth Hopkins, Rachael Hodge, Ann Scholfield, Thomas Scholfield, Andrew Scholfield, William Scholfield (of Issacker); Martha Stanton, James Stanton, Jane Anderson, Sarah Anderson, Mary Anderson, William Elliott, Joseph Elliott, Sarah Elliott, Margaret Elliott, Maria Elliott, Thomas Elliott, Mary Elliott, James Evans, (of Jonathan); John Evans (of Theophilus); George Evans, Cadwallader Evans, Oliver Evans (of Oliver); John Lampley, Elizabeth Lampley, Eliza W. Evans, Rachel Evans, Leah Evans, Thomas Evans, Evan Evans, Jesse Evans, Oliver Evans (of Joseph); Abner Evans, George Evans, Joseph Evans, Joseph Ball, William Brackin, Adeline Brackin, Elizabeth Brackin, Margaret Brackin, and Minnie Johnson, or if either or all of them be dead, then the unknown heirs and devisees of any or all of the above-named defendants, cause their appearance to be entered herein on or before the first rule day occurring forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order, otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once in November and three times weekly in December, 1905, prior to said return day, good cause having been shown by the bill and affidavit filed herein, to the satisfaction of the court, that further or longer publication is unnecessary. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] nov. 10; dec. 1, 8, 15

Digitized by Google

Legal Notices.

R. Ross Perry & Son, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Caldwell Poor**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of November, A.D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. ELLA POOR, care of R. Ross Perry & Son. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,224. Administration. [Seal.] 45-3t

Wm. E. Harvey, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration d.b.n. on the estate of **Daniel A. Connelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of November, 1905. WILLIAM B. KING, 728 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 1179. Administration. [Seal.] 45-3t

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

The Springfield Fire and Marine Insurance Company, a Corporation, Complainant, v. John B. Wight et al., Defendants. Equity No. 25,122.

Charles S. Shreve, Jr., and William F. Hall, trustees, having reported to the court that they have received a private offer to purchase lots, viz: All of lots D, E, F, G, H, and I, in Gideon L. Walker's subdivision of lots in square numbered one hundred and seventy-two (172), as per plat recorded in liber R. W., folio 126, surveyor's office, D. C., more fully described in the original order of sale herein, from John M. Clapp, for the sum of ninety-five hundred dollars ($9,500), all cash, it is, by the court, this 7th day of November, A. D. 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **9th day of December, A. D. 1905**. Provided that a copy of this order be published once a week for three successive weeks prior to said last mentioned date in The Washington Law Reporter.

[Seal] By the Court: THOS. H. ANDERSON, Justice.

A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. nov 10, 17, 24

Harry G. Kimball, Solicitor

In the Supreme Court of the District of Columbia.

Alice M. Peck, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Appelona Whitehair, Deceased, et al., Defendants.

In Equity. No. 25,782.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (103) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Appelona Whitehair, deceased, and the unknown heirs, alienees, and devisees of Justinian Mayberry, deceased, cause their appearance** to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times.

[Seal] By the Court: THOS. H. ANDERSON, Justice.

True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 12-19

Legal Notices.

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Susana Griswold**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 27th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of November, 1905. GEORGE PRINCE, by Wolf & Rosenberg, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,496. Admn. [Seal.] 45-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the States of Illinois and Georgia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Lavinia Bartlett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of November, 1905. WILLIAM HOLABIRD, Monodnock Block, Chicago, Ill.; JOSEPH WILLARD PRESTON, 407 Equitable Building, Atlanta, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,196. Administration. [Seal.] 45-3t

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.

Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants.

No. 25,588, Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 3½ inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3½ inches; thence south 183 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3½ inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees, cause their appearance** to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and alienees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —— Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post.

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

nov 10-17-24; dec 2-9; jan 5-12

Digitized by Google

Legal Notices

THIRD INSERTION.

Benjamin Carter, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Florence H. Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1905. BENJ. CARTER, Bond Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,239. Administration. [Seal.] 44-3t

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Catherine McGuinn**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. HENRY P. BLAIR, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,191. Administration. [Seal.] 44-3t

Thos. Walker, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of October, 1905. WALTER G. BRADLEY, New York Mills, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,782. Administration. [Seal.] 44-3t

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

D. H. Roland Drury v. Minnie Fuller and Others.

No. 25,650 Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are **Minnie Fuller** (if living), and the unknown heirs, devisees and alienees of **Minnie Fuller** (if deceased), of **Andrew Schoffield**, of **Robert Leckie**, of **Ruth Fuller**, of **Calhoun Clark**, and of **Sarah F. Fitzgerald**. On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal]

nov 3-10-17; dec 1-8; jan 5-12

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Adolphe Berger**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,228. Administration. [Seal.] 44-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Nathaniel E. Thompson, otherwise known as Elbridge N. Thompson**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 20th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properiv vouched. Given under my hand this 2d day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer; by John B. Larner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,523. Adm. [Seal.] 44-3t

John B. Larner, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Edwin S. Houston**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of July, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1905. THE WASHINGTON LOAN & TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,067. Administration. [Seal.] 44-3t

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Alienees of George Mason and Others. No. 25,700. Equity Docket No 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and alienees of **George Mason**, of **William Mason**, of **A. E. Grimes**, and of **Elizabeth Hooe**, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in the Washington Times. By the court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal.]

nov 3-10; dec 1-8; jan 5-12

Digitized by Google

Legal Notices.

Benjamin S. Minor and T. Percy Myers, Solicitors

In the Supreme Court of the District of Columbia, Tillotson E. Brown et al. v. Charles W. Brown et al.
In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 55 feet of lot 1, in square 397, with the improvements thereon, to Tillotson E. Brown for the sum of $9,750; lot 2, in square 556, with the improvements thereon, to Mary A. Martin, for the sum of $1,275; and subiot 70, in square 415, to Tillotson E. Brown, for the sum $1,124.12, it is, this 30th day of October, A. D. 1905, by the court, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the **30th day of November, 1905.** Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-3t

Douglass & Douglass, Solicitors

In the Supreme Court of the District of Columbia. Samuel Rothert et al., Complainants, v. Susie Brice et al., Defendants.
Equity No. 25,457. Doc. 56.

Edgar B. Sherrill and John R. Shields, trustees, having reported to the court the sale of the real estate mentioned and described in the bill of complaint filed in the above entitled cause, being parts of original lots numbered 2 and 3 in square numbered 69, in the city of Washington, in the District of Columbia, beginning for the same at a point 5 feet east from the southwest corner of original lot numbered 2 in said square, and running thence north 100 feet; thence west 22 feet 6 inches; thence south 100 feet to the line of N street north, and thence east 22 feet 6 inches to the beginning; being the same land included in lot numbered 190, in said square numbered 69, according to a subdivision made by John H. Rothert, and recorded in book No. 28, page 126, in the office of the surveyor for the District of Columbia, to Albert Marshall for the sum of one thousand five hundred seventy-five dollars ($1,575), it is by the court, this 27th day of October, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the **28th day of November, 1905.** Provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 44-3t

Ralston & Siddons, Solicitors.

In the Supreme Court of the District of Columbia, Joseph H. Byram, S. Norris Thorn, Trustees of the Home Building Association, of the District of Columbia, v. The Unknown Heirs, Devisees, and Representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, and Thomas Barclay, George Barclay, and Anthony Barclay. Equity No. 25,653.

Process having been duly issued against the defendants herein and returned "Not to be found," although diligent efforts have been made to find them, it is, this 23d day of October, A. D. 1905, ordered that the **unknown heirs, devisees, and representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, Thomas Barclay, George Barclay, and Anthony Barclay,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, which is to be published once a week for three weeks in The Washington Law Reporter and The Washington Post; otherwise this cause will be proceeded with as in case of default. The object of this suit is to establish of record the title in fee simple of the complainants to part of lot two hundred and nine (209) in square twelve hundred and fifty-nine (1259) in the city of Washington, District of Columbia, described as follows: Beginning for the same at the northwest corner thereof and running thence south 122 feet 8 inches to the south line of said lot; thence east 31 feet 1 inch; thence north 10 feet (the width of the alley hereinafter reserved); thence east 2 feet 2 inches; thence north 20 feet, more or less, to the south line of lot conveyed to Jared Nichols; thence west 25 feet; thence north 90 feet to line of West street, and thence west 8 feet 3 inches, more or less, to the place of beginning; with the right to use a 10-foot alley running along and over the south part of lots 209 and 210 to give an outlet on Montgomery street. THOS. [Seal.] H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 44-3t

Legal Notices.

Jos. D. Sullivan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **George H. Plant,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of November, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of November, 1905. ARTHUR G. PLANT, care of Traders National Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,249. Admn. [Seal.] 44-3t

FOURTH INSERTION.

Oscar Luckett, Solicitor

In the Supreme Court of the District of Columbia.

James Hyde v. The Unknown Heirs, Alienees, and Devisees of Charles Carter.
No. 25,699. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to that parcel of land situated in the city of Washington, District of Columbia, known as and being lot numbered sixty-four (64) in A. D. Jessup's subdivision of lots in square numbered two hundred and eighteen (218), as per plat recorded in liber R. L. H., folio 236, of the records of the surveyor's office of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein, it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant, by his solicitor, Oscar Luckett, it is this 23d day of October, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Charles Carter,** cause their appearance to be entered herein on or before the first rule day occurring forty days next after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law Reporter at least once in the month of October and three times in the month of November. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. oct 27-nov 3,10,17

[Filed October 23, 1905, J. R. Young, Clerk.]

Carlisle & Johnson, Solicitors.

In the Supreme Court of the District of Columbia,

Louis P. Shoemaker, Trustee, v. The Unknown Heirs, Alienees, and Devisees of John C. Roemele and William or William B. Smith. No. 25,621. In Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the west half of lot seven (7) in Samuel Davidson's recorded subdivision of lots in square one hundred and sixty-three (163), fronting fifteen (15) feet on the north side of K street northwest, by depth of one hundred (100) feet eleven (11) inches, in the city of Washington, District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the said defendants, and it further appearing to the court that upon good cause shown by affidavit filed herein it is not necessary that this order should be published at least twice a month for a period of not less than three months. On motion of the complainant by his solicitors, Carlisle & Johnson, it is this 23d day of October. A. D., 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of John C. Roemele and William or William B. Smith** cause their appearance to be entered herein on or before the first rule day occurring forty days after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in the Washington Law Reporter and the Washington Post at least once in the month of October and at least three times in the month of November. THOS. H. ANDER- [Seal.] SON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 43-4t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 47

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - NOVEMBER 24, 1905

CONTENTS.

Editorial 737
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
The Washington Loan and Trust Company, Garnishee, appellant, v. Susquehanna Coal Company 738
Clarence A. Brandenburg, appellant, v. The District of Columbia 740
Thomas R. Martin, appellant, v. District of Columbia, appellee 742
Mary A. Dobbins, appellant, v. Frank H. Thomas 743
Legal Notices 746

THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Seventy-third Rule; Affidavits of Defense.

In Potomac Laundry Company v. Miller, executrix, the appeal was from a judgment for the plaintiff in an action of assumpsit, rendered under the 73d rule for insufficiency of the affidavit of defense. The Court of Appeals, in an opinion by Mr. Justice McComas, applies the rule announced in the case of Lawrence v. Hammond, 22 Wash. Law Rep. 749, and in a number of subsequent cases, that while the rule, so far as it relates to the affidavit of the plaintiff, is to be strictly construed, it is to be broadly and liberally construed as regards the counter-affidavit of the defendant; and holds that, taking the two affidavits together, the defendant had stated grounds of defense sufficient, if true, to defeat the plaintiff's claim in whole or in part. The judgment is reversed, and the cause remanded for trial in regular course.

Alimony—Allowance of Pending Appeal.

In Lane *v.* Lane, the appeal was from an order of the court below adjudging the defendant in a proceeding for divorce to be in contempt for failure to pay alimony as directed, and committing him to custody until payment should be made. Pending the appeal the appellee applied to the lower court for an allowance of counsel fees, which that court denied for want of jurisdiction to grant the order; and thereupon a similar application was made to the Court of Appeals. That court, in an opinion by Mr. Chief Justice Shepard, stated that the question of the court's power to make such an allowance was now clearly presented, and holding that the court has such power, the application was granted and an order passed requiring the appellant to pay a sum certain to the clerk of the court for the use of the appellee, and in event of his failure to do so that the appeal be dismissed.

Patents—Computing Scales—Suit for Infringement.

In Computing Scale Company of America v. The Automatic Scale Company, the appeal was from a decree of the court below dismissing a bill filed to enjoin the infringement of a patent. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the ruling of the court below, holding that the claims in suit were not infringed when limited, as they must be, by the prior state of the act, and that certain other claims were void for lack of patentable invention, as disclosed by the proceedings in the Patent Office and by the prior act.

Criminal Libel—Motion to Affirm Judgment Granted.

In Raymond v. United States, the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, grants a motion made on behalf of the United States to affirm the judgment of the court below, by which the appellant, who had been convicted of criminal libel, was sentenced to a term of five years in the penitentiary.

Call of Calendar in Circuit Court No. 2.

Mr. Chief Justice Clabaugh, sitting in Circuit Court No. 2, has caused to be issued the following notice: "There will be a preliminary call of the even-numbered cases on the trial calendar, beginning with No. 152 and ending with No. 300, in Circuit Court No. 2, Monday morning, November 27, 1905, at 10 o'clock. Cases in which there is no response will be continued for the term."

THE semi-annual examination of applicants for admission to the bar of the Supreme Court of the District of Columbia will be held on Friday and Saturday, December 8 and 9, 1905. Those intending to take the examination should file their applications with assistant United States attorney Ralph Given, secretary of the examining committee, during the coming week.

Digitized by Google

Court of Appeals of the District of Columbia.

THE WASHINGTON LOAN AND TRUST COMPANY, GARNISHEE, APPELLANT,

v.

SUSQUEHANNA COAL COMPANY.

ATTACHMENT AND GARNISHMENT; TRUST COMPANY; PROPERTY IN SAFE DEPOSIT BOX.

1. Property deposited by a defendant in a safe deposit box of a trust company is the defendant's property in the hands of and in charge of the trust company, within the meaning of the provisions of the Code relating to attachments, and by the terms of the Code the trust company is liable to be garnished therefor.
2. Where, in an action at law, the affidavits upon which an attachment before judgment was based alleged that the defendant had assigned his property to his son to defraud his creditors, and was about to dispose of and secrete other property with like intent, and that large sums of money and securities had recently been deposited by the defendant and his wife in a safe deposit box standing in his name or that of his wife or son in the vault of a trust company, the trust company, as garnishee, may be required in answer to interrogatories propounded by the attaching creditor, to disclose whether or not there is in its vaults and in its charge a safe deposit box standing in the name of either of the alleged fraudulent assignees, the wife and son of the defendant.
3. An order of the court below requiring the trust company to submit to an oral examination and to answer such interrogatories, affirmed.

No. 1554. Decided November 8, 1905.

APPEAL by garnishee from an order of the Supreme Court of the District of Columbia, at law, No. 47,502, requiring it to answer certain interrogatories. Affirmed.

Mr. A. S. Worthington and *Mr. Chas. L. Frailey* for the appellant.

Mr. F. D. McKenney, *Mr. J. S. Flannery*, and *Mr. Wm. Hitz* for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This case is now before this court upon a special appeal allowed from an order of the court below requiring the Washington Loan and Trust Company, the appellant, to answer, as garnishee, certain interrogatories propounded to it by the Susquehanna Coal Company, the appellee, plaintiff below, in action at law against John Kennedy to recover from him $24,000 for coal sold and delivered.

With the declaration, affidavits supporting the claim and particulars of demand were filed. At the same time a writ of attachment was issued, based upon three affidavits which averred that Kennedy had disposed of and secreted and was about to dispose of and secrete his property in order to defraud his creditors. Several of these affidavits averred that Kennedy had a safe deposit box standing in his own name or that of his wife in the Washington Loan and Trust Company, upon which company asg arnishee said writ was served, and the garnishee was notified to appear.

Attached to the writ were five interrogatories to which the garnishee was required to make answer under oath. To the first and second interrogatories requiring the garnishee to make answer, whether or not it was indebted to the defendant Kennedy, or whether or not it had any goods, chattels, and credits of said defendant, the garnishee answered in the negative. To the three remaining interrogatories the garnishee, under advice of counsel, refused to make answer.

Two of the affidavits upon which the writ of attachment was based having stated that Kennedy had recently assigned all his property in his coal yard in Washington to his son with the purpose of defrauding his creditors, and is about to dispose of and secrete other property with like intent, and that large sums of money have been deposited recently by Kennedy and his wife in a safe deposit box standing in his name or his wife's, the box being in the vault of the Washington Loan and Trust Company; the three interrogatories which the garnishee refused to answer inquired concerning the safe deposit box, its holder, and its contents.

The three interrogatories required the garnishee to make answer whether or not it had in its possession or control any goods, chattels, or other property of the defendant's wife, or whether or not it had in its possession or under its control a safe deposit box belonging to the defendant or his wife, or such a safe deposit box standing in the name of the defendant or his wife or his son, and further information respecting the right of access to and the contents of such safe deposit box.

Upon the application of the appellee the court below required the garnishee to submit to an oral examination and to make full answer to each of the last three interrogatories. From this order of March 31, 1905, this court allowed this special appeal.

On behalf of the appellant it is urged that a trust company can not be compelled by attachment proceedings to disclose whether or not it has in its possession or under its control a safe deposit box belonging to a defendant in attachment proceedings; and if the attachment be based upon affidavits averring that the defendant's wife and son have aided the defendant in disposing of his property to defraud his creditors, and have thereafter deposited large sums of money in a safe deposit box standing in the name of the defendant or in the name of his wife or son, the trust company, as garnishee, can not be compelled to disclose either the name of the holder of such safe deposit box in its vault, or its knowledge, if any, of the contents of the safe deposit box.

If such use of attachment proceedings be sanctioned, it is said, such writs would be used to procure disclosures to aid other proceedings to get possession of the contents of such boxes and thus pervert the provisions of the Code relating to attachment.

A safe deposit box, it is urged, does not fall within the "goods, chattels, and credits" of the defendant which may be attached. The trust company has no right to open its customer's box, can not know its contents, and does not "have possession or under its control" any property of defendant which may be in the box, and these interrogatories, therefore, seek a vain thing, and also seek to violate the private and confidential relations existing between a safe deposit company and its customers.

Justice Sharswood in the case of Gregg v. Hilson, in the Supreme Court of Philadelphia, at nisi prius, held that under the Pennsylvania

Digitized by Google

law of attachment such rented safe deposit boxes can not be the subject of attachment. "They are not a debt due to the defendant or a deposit of money made by him, or goods or chattels pawned, pledged, or demised." The contents of the safe are in the actual possession of the rentor of the safe. They have not been deposited with or demised to the company. I am asked to make an order upon the company to open the safe and file an inventory of its contents. This, I am of opinion, I have no power to do." Gregg v. Hilson, 8th Phila. Rep. 89.

We can not accept the view of Justice Sharswood. Under the Code attachment provisions take a wider range than the Pennsylvania statute at that period permitted. There is no uniformity in the statutes of the several States respecting attachment and garnishment. However, there are two comprehensive grounds common to every attachment system as to the general basis of a garnishee's liability. First, his liability ex contractu to the defendant; second, his possession when garnished of personal property of the defendant capable of being seized and sold on execution.

The Code of the District of Columbia liberally provides for reaching the debtor's goods, chattels, and credits by garnishment, and the several sections taken together define the possession of personal property which will make a third person liable as garnishee.

With the writ of attachment and garnishment in all cases the plaintiff may exhibit interrogatories to be served on any garnishee concerning any property of the defendant in his possession or charge, and the garnishee may be examined orally touching any property or credits of the defendant in his hands. Code D. C., sec. 447.

The plaintiff may exhibit interrogatories to be served upon any garnishee concerning any property of the defendant in his possession or charge. Ib. sec. 1089.

An attachment may be levied on credits of the defendant in the hands of a garnishee. Ib. sec. 456.

Property of a defendant in a safe deposit box of a trust company is either in the possession of the defendant or in the possession of the trust company.

If it is in the possesion of the defendant, under the Code, it appears liable to attachment and execution. If it is in the possession of the trust company, such company may be garnished therefor, as in possession of personal property of the defendant capable of being seized and sold on execution. A mere device to guard from intrusion the defendant's property in the vault of the trust company neither divests the defendant of his property nor releases the company from its charge of defendant's property. There is no magic in two keys, a master key and a customer's key, to put property belonging to a defendant in an attachment beyond the reach of creditors and the process of the courts.

If there were a doubt respecting the term "possession," there can be no doubt that property deposited by a defendant in a safe deposit box of a trust company is the defendant's property in the hands of and in charge of the trust company, and by the terms of the Code the trust company is liable to be garnished therefor.

We agree with the decision in United States v. Graff, 67 Barbour, 310. In the case before us the Washington Loan and Trust Company appealed from an order requiring it to answer the three interrogatories before mentioned respecting a safe deposit box. In the case in New York the Mercantile Trust Company appealed from an order directing the sheriff to break open the safe deposit box if necessary to get possession of certain contents thereof. That court held that "neither the safe nor the tin box constituted any portion of the defendant's dwelling, and they were not within the protection which the law affords to that against an officer acting under civil process. They were simply places of deposit and safe keeping for the defendant's property, which the sheriff may enter to make the seizure required by law, in the execution of the process in his hands. If that were not so, there would be nothing to prevent a failing or insolvent debtor from turning all his property into valuable securities or other articles requiring but little space for their custody, and then placing them in the hands of a safe deposit company for preservation, and defying all the efforts of his creditors to satisfy their debts by resorting to them. That would form an expedient for the success of fraudulent devices, which might render the laws of the State for the collection of debts entirely powerless. No such effect could be given to a deposit of that nature without at once defeating the object plainly designed to be secured by the law in rendering the debtor's property liable to the process issued in favor of his creditors in actions brought to recover their just debts. Against that, his dwelling alone is secured against the intrusive action of the officer. And, that in no sense, can be so far extended as to include either the safe or tin box in the custody of the Mercantile Trust Company, for the defendant. . . . If a certificate can not be obtained showig then property so held for the debtor, and it can not be seized under attachment or execution, then certainly the creditors are deprived of all ordinary means for applying it to the satisfaction of their debts. And an effectual mode would be at last discovered for enabling a debtor to withhold his property from his creditors. The law has not yet, and probably will not very soon, lend its aid to the success of such an expedient for the protection of a debtor's property against the clearly defined rights of his creditors." United States v. Graff, 67 Barbour, 310.

A statute in the State of Washington provides that when the garnishee has in his possession or under his control any personal property of the defendant liable to execution the court shall require the garnishee to deliver the same to the sheriff.

In Trobridge v. Spinning, 23 Washington, 69, 70, it appeared that Spinning had rented a box controlled by a master key and by Spinning's key, in the safety deposit vault of a bank, and the court held that inasmuch as the bank could put it in the power of Spinning to remove the contents of the box, and Spinning could not remove the contents of the box without the consent and cooperation of the bank, the latter as against the defendant had control of the

Digitized by Google

contents of the box although it could not as garnishee answer specifically as to the contents of the box. The court could inquire into the contents of the box and determine what effects therein were liable to execution.

We find no good reason for exempting property of a defendant in a safe deposit vault from execution or attachment. The Code recites the classes of property which are exempt from execution and attachment. In this case before us the learned justice in the court below decided that the trust company alleged to have charge of the property of the defendant, Kennedy, in a box in the safe deposit vault was not exempt from liability to answer as garnishee the interrogatories whether or not it had in its possession or under its control a safe deposit box of the defendant.

The court below also decided that the trust company should further answer like interrogatories concerning property of the defendant's wife and son, and concerning a safe deposit box alleged to stand in the name of either of them. The Code (sec. 470) provides that when as in this case, the ground of the attachment is that the defendant has assigned or disposed of his property with intent to defraud his creditors, the attachment may be levied upon the property alleged to be so assigned in the hands of the alleged fraudulent assignee as a garnishee.

The appellee, the plaintiff below, in this attachment was entitled to the answer of the garnishee, the appellant, disclosing whether or not there was in its vaults and in its charge a safe deposit box standing in the name of either of the alleged fraudulent assignees, the wife or son of the defendant, Kennedy.

It is needless to recite here the provisions of the Code which afford this trust company protection from wrongful attachments and garnishments and which are likely to save it from frequent and vexatious inquisition.

The few decisions upon the question raised by this appeal suggest that heretofore such suits have been infrequent.

We perceive no injustice or injury done to the garnishee by the order appealed from. That order must be affirmed with costs, and it is so ordered.

Affirmed.

CLARENCE A. BRANDENBURG, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

CONSTITUTIONAL LAW; OPENING OF ALLEYS; ASSESSMENT OF BENEFITS; IRREGULARITIES IN PROCEEDINGS.

1. The act of Congress of July 22, 1892, authorizing the Commissioners of the District to open and extend alleys, and the amendatory act of August 24, 1894, extending its provisions so as to authorize the opening of minor streets, and directing the apportionment of the amount awarded as damages, etc., against the lots or parcels of land benefited, are constitutional and valid.
2. Certain alleged irregularities in proceedings had under said acts for the opening of an alley or minor street held not such as to require the amendment of the assessment made against the lots of petitioner, and an order quashing a writ of certiorari to review the assessment affirmed.

No. 1586. Decided November 8, 1905.

APPEAL by petitioners from a judgment of the Supreme Court of the District of Columbia, at Law, No. 42,961, dismissing a petition for a writ of certiorari. Affirmed.

Mr. C. A. Brandenburg, *Mr. E. C. Brandenburg*, and *Mr. F. W. Brandenburg* for the appellant.

Mr. E. H. Thomas and *Mr. F. H. Stephens* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from the judgment of the court below overruling the motion of petitioner to quash the return of the respondent to the writ of certiorari, issued herein, and dismissing the petition.

It appears that appellant, at the time of the proceedings complained of, was, and still is, the owner in fee of certain lots known as 42 and 43 in square 69, in the District of Columbia.

By an act of Congress, approved July 22, 1892, the District Commissioners were authorized to open and extend alleys, and by an amendatory act, approved August 24, 1894, its terms were extended to authorize the opening of minor streets. Pursuant to the provisions of said acts, the Commissioners of the District of Columbia, upon the request of the claimed owners of more than one-half of the land in the square, in February, 1898, applied in writing to the marshal of the District to summon a jury to condemn the land necessary for widening a thirty-foot alley in square 69 to a width of sixty feet, and to apportion the damages and assess the benefits thereof as provided for in said acts. The marshal summoned a jury of twelve disinterested citizens and notified the owners of the property to be affected, among whom is, this appellant, who is named as having been served with a copy of the notice, which specified the time and place of the meeting of the jury.

The jury, having subscribed and sworn to the oath required, proceeded to discharge the duties imposed upon them and duly certified their proceedings, which, in turn, were certified by the marshal and returned to the District Commissioners. The award and finding of the jury, so far as relates to the appellant's lots, shows that they assessed the value of the land taken at 25 cents per foot, amounting to $92 for sublot 42 and $75 for sublot 43. The jury charged against the parts of the two lots remaining as benefits at the rate of 50 cents per foot, or a total of $650 and $550, respectively, and deducting the sums allowed for the parts taken, found the amounts due to be, respectively, $558 and $475. Pursuant to the findings of the jury, the District assessor levied these amounts against the residue of the two lots.

The District of Columbia made a return to the writ of certiorari, and prayed that it be quashed and the petition denied. A hearing was had, which resulted, as stated, in a denial of appellant's motion to quash the appellee's return and for judgment quashing the taxes complained of, and dismissed the petition for the writ. This action of the court below is assigned as the error in the case. It is urged on behalf of appellant, 1st, that the act of Congress under which the proceedings were had is unconstitutional, and, 2d, that the proceedings had were not in accordance with law.

Digitized by Google

1. It is urged that the act is unconstitutional, because it provides for taking private property for public use without just compensation and without due process of law; because it provides for the apportionment of the total amount of damages awarded for the land condemned, with the expenses of the proceedings, among the lots in the square without regard to actual benefits; that it limits the area of assessment to the particular square without reference to benefits to adjacent squares, and without regard to the fact that actual benefits may not equal the total cost of the improvements; and, finally, that the law being general, no legislative consideration can be had in reference to the actual benefits of the area benefited in each particular proceeding taken.

It is conceded that in view of the decision of the Supreme Court in Davidson v. Wight, 181 U. S. 371, Congress has the right to direct that all the expenses of an improvement may be assessed upon the property benefited, and may define the territorial district considered to be benefited. We are not prepared to say that Congress, having such right, may not pass a general act for opening or widening minor streets and alleys located within a single block, and declare that the property benefited shall be held to be the property within the block, and that the cost of the improvement shall be borne by the owners of such located property. Upon such a subject we think legislative consideration can be had, and that Congress exercised it in framing and passing the act complained of. It appears to us to be quite different from the case where tracts of land are to be taken for parks or other purposes, or from the opening of streets of considerable length, opening up a new section of a city. We must not lose sight of the fact that the Supreme Court of the United States has spoken in no uncertain tone of the powers, both of a political and municipal nature, of Congress over the District of Columbia. U. S. v. Lee, 106 U. S. 196. In condemning private property for public purposes hardships will often follow, be the proceedings had either under a general statute or under a special act. We may admit that special acts for the purpose specified are fairer to and better for the property owner than general acts, but to declare a general act unconstitutional requires something more. In our opinion, the act under which this proceeding was had is not unconstitutional.

2. This conclusion requires us to consider whether the alleged irregularities in the proceeding were such as to require a ruling that the tax complained of should be annulled. Any objection based on the ground that the Commissioners of the District failed to certify that the preservation of peace, good order, and public morals required the widening of the alley, conceding that the passageway widened was an alley and not a minor street, is of no force, provided the owners of more than one-half of the real estate in the square signed the petition upon which they acted. It appears that the District assessor certified that the persons whose signatures were appended to the petition appeared to be the owners of 121,255 square feet, which were more than the one-half of the land within the square. If the contention of the appellant that the certificate is faulty in that it states that the persons signing "appear" to be the owners, etc., it would require, in order to make a certificate free from any criticism as to form, that an examination be made in all cases similar to this, as well as in this, not contemplated by the act in question or by any reasonable act. The objection is one which should be taken, if at any time, when the hearing is had before the jury. It appears that notice was given to the appellant of the time and place of the meeting, and, though the notice is objected to as insufficient, we think that it was sufficient to require the presence of the appellant if he desired to raise objections to the preliminary proceedings or to see that the damages and advantages to his property were properly passed upon. This is so at least as to technical objections, which could have then been cured. We think that the certificate of the assessor was sufficient both as to form and substance, and that the signatures to the petition were sufficient basis upon which to found his certificate. It is not to be presumed that he did not make proper examination of the official records in considering the petition, nor that he did not have sufficient proof before him that the parties signing had the legal title to the property for which they signed. While it may be that the appellant could have shown otherwise, and is injured because he did not do so at a proper time, we must consider that the tax payers of the District are entitled to have their interests guarded. While it is stated in appellant's brief that this proceeding was promptly taken, yet the record discloses nothing earlier in date than the filing of the amended petition, which was on June 3, 1904. Proceedings such as these should not only be promptly commenced but diligently prosecuted. Nevertheless, we do not question that all statutory requirements in proceedings of this nature must be observed, and that any failure to observe them can be availed of at almost any stage of the proceeding, but we have referred to what might be termed the equities and hardships of the case at bar because the appellant's argument, or brief, largely relates to them.

The objections that there is no finding by the jury of benefits, and that the assessment is in excess of the value of the lots and in excess of the benefits received, are not sufficiently shown to warrant a reversal. The jury having found the damages to the real estate to be the value of the respective parcels of land at the time of taking, proceeded, as the act required them to do, to apportion the amount of such damages as benefits to the remaining property—all this after having "entered upon said square" and after "having heard evidence introduced by the parties interested." The appellant having been served with due notice, had an opportunity to be heard on the subject of damages and benefits to his lots, and can not now be heard to insist that the taxes complained of should be annulled because the jury failed to make correct assessment and apportionment, whatever his rights may be to attack the constitutionality of the act and the preliminary steps leading up to such proceedings before the jury.

While on its face the allegations of the

Digitized by Google

amended petition, especially as fortified by the brief, show a case of hardship, it is not such a one as we can recognize as vitiating the act under which the proceedings were taken or invalidating the proceeding itself.

We conclude that there was no error in the decision of the court below, and it should be affirmed, with costs. And it is so ordered.

THOMAS R. MARTIN, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

OPENING OF ALLEYS; NOTICE TO OWNERS OF LAND; HOLDER OF NOTE SECURED BY DEED OF TRUST NOT ENTITLED TO NOTICE.

1. Where, in a proceeding under the act of Congress of July 22, 1892, as amended by the act of August 24, 1894, for the opening of an alley or minor street, certain of the lots affected by the proceeding are incumbered by a deed of trust, the holder of the note secured by such deed of trust is not entitled to notice,—the act only requiring notice to be given to the proprietors of the land.
2. Whether in such case it is necessary that notice be given the trustees named in the deed of trust not decided.
3. A holder of the note, acquiring title to the same subsequent to the proceedings to open the alley, and after the matter of the proceedings had become a public record, can not, in an independent proceeding and in his own name, attack the special assessment against the lots covered by the deed of trust on the ground that no notice thereof had been given the then holder of the note.

No. 1585. Decided November 8, 1905.

APPEAL by petitioner from a judgment of the Supreme Court of the District of Columbia, at law, No. 46,982, dismissing a petition for a writ of certiorari. Affirmed.

Mr. C. A. Brandenburg, *Mr. E. C. Brandenburg*, and *Mr. F. W. Brandenburg* for the appellant.

Mr. E. H. Thomas and *Mr. F. H. Stephens* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

In the case of Brandenburg v. District of Columbia, decided at this term of the court, ante, p. 740, we have determined adversely to the appellant all the questions raised by this appeal, save whether Thomas R. Martin, the appellant, was entitled to notice of the proceedings referred to in Brandenburg v. District of Columbia, supra. Reference is made to that case for the facts relative to the proceedings under which parts of the lots referred to in the record in this case were taken, damages awarded for such taking, benefits to the remaining parts of the lots apportioned against them, and the damages deducted from the benefits, and the balance made a charge upon the lands remaining.

The additional facts disclosed by this record, so far as necessary to be considered, show that prior to the proceedings above referred to, Brandenburg, being the owner in fee of the lots in question, conveyed the same to certain persons, as trustees, upon the usual terms, to secure the payment to one Florence E. Edwards, guardian, of a certain promissory note of said Brandenburg, and the renewals thereof, for the sum of one thousand dollars, with interest, and payable to her three years after date. Such deed of trust was duly recorded among the land records of the District of Columbia. At the time when the proceedings referred to were taken, Florence E. Edwards was the owner and holder of the note. Later, but at what exact time does not appear, the appellant became the owner, for value, of the note, acquiring ownership from Edwards, the payee. The note was unpaid at the commencement of these proceedings in April, 1904. It will be seen by reference to the Brandenburg decision that the condemnation proceedings were had early in 1898.

The question to be determined herein, as stated by appellant, is whether he as the holder of the note, the payment of which is secured by the trust deed, has such an interest in the property as permits him to question in this proceeding the validity of the special assessment for opening Newport Place, the name given to the street as widened by the proceedings.

To put it exactly, the question is whether Martin, who became the owner of the note after the proceedings complained of were had, can attack, in an independent suit, and in his own name, the special assessment, because notice of the same was not given to the owner of the note at the time of the taking of the proceedings, or to the trustees named in the trust deed. We are of the opinion that he can not sustain this proceeding, for the reason that at the time the proceeding was had he was neither the owner of the property in question nor had any interest, of any name or nature, therein. After the proceedings were had he became the owner of the note. The matter of the proceedings had become a public record. We do not think that, conceding that the payee and holder of the note had a right to notice, he, as the now owner of it, can attack the proceedings in an independent proceeding brought by him and in his own name. We, however, do not think that the original payee of the note was entitled to notice of the proceedings, for the act says that notice shall be given to the proprietors of the land. A holder of a note, the payment of which is secured by a deed of trust, is no more the proprietor of the land referred to in such a deed than is the holder of a bond, secured by a mortgage upon property, the owner of that property, or part owner of it, were it a case where one mortgage was given to secure more than one bond. In the latter case it would be practically impossible to take any steps under the act in question when the owner of the property had executed a trust deed or mortgage to secure an issue of notes or bonds. If, under the act, or if upon any legal ground, notice is required to be given to any one when a deed of trust or mortgage is outstanding, such notice would, in our opinion, only have to be given to the trustee or trustees named in the deed of trust or mortgage, not to the holders of notes or bonds to secure the payment of which the deed of trust or mortgage was given. As this is not a proceeding brought by or in the name of the trustees named in the deed of trust, it is unnecessary to decide whether notice should have been given to them. No

Digitized by Google

reason is set forth in the petition why any rights of the appellant can not be protected and enforced by the trustees of the deed of trust.

To hold that holders of notes, payment of which is secured by trust deeds, are entitled to notice of proceedings of this character disclosed by the petition herein would establish an unwise precedent.

The court below did not err in quashing the writ, and its decision should be affirmed with costs. And it is so ordered.

MARY A. DOBBINS, APPELLANT,
v.
FRANK H. THOMAS.

SEVENTY-THIRD RULE; AFFIDAVIT OF DEFENSE; MARRIED WOMEN; POWER TO CONTRACT; EXCHANGE OF LANDS; NECESSARIES.

1. It is the well-settled construction of the 73d rule that while the affidavit of the plaintiff, which would deprive the defendant of his right to trial by jury, is to be construed with some strictness, that of the defendant must be accorded a fairly liberal interpretation. All that is required is that the facts alleged shall be sufficient to indicate a substantial legal defense made in good faith.
2. An affidavit of defense held to contain a sufficiently distinct denial of the contract set up by the plaintiff's affidavit to entitle her to a trial of the issues in regular course.
3. Under sections 1155 and 1156, Code D. C., a married woman has power to make a contract to exchange real estate owned by her for that owned by the other party to the contract, and as part of the transaction to agree to purchase the personal property in the house received by her at an agreed price, upon which shall be credited the value of the personal property in the house exchanged by her, the balance to be paid in cash.
4. Sec. 1177, Code D. C., does not preclude a married woman from rendering herself liable for necessaries when contracted for independently of her husband and with reference to her separate estate; but merely provides that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law.

No. 1540. Decided November 8, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at law, No. 47,377, entered under the 73rd rule of that court for insufficiency of affidavit of defense. Reversed.

Mr. Leo Simmons for the appellant.

Mr. R. Golden Donaldson for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the court.

This is an appeal from a judgment entered in an action of assumpsit under the 73d Rule of the Supreme Court of the District of Columbia. The declaration of the plaintiff, Frank H. Thomas, in the general common counts, claimed of the defendant, Mary A. Dobbins, a married woman, the sum of $296.83. The bill of particulars accompanying the declaration recites a number of items of household furniture and supplies, to the aggregate value of $433.83, and gives a credit for similar articles received of the aggregate value of $137, leaving the balance above stated. It also recites that this is the amount due from the defendant "in connection with the trading or exchanging of a certain house on Highland avenue, Cleveland Park, D. C., and contents, belonging to Frank H. Thomas, for a certain house, No. 3200 Thirteenth street, N. W., this city, and contents, belonging to said Mary A. Dobbins."

The affidavit on which the motion for judgment was founded contains the formal averments required by the rule and further states substantially that on July 28, 1903, the plaintiff was the owner of an equity of redemption in the lot and improvements in Cleveland Park, together with certain contents as set forth in the bill of particulars, aforesaid. That on the same day, the defendant, a married woman, was the owner of the equity of redemption in the house No. 3200 Thirteenth street, N. W., aforesaid, together with certain furnishings, as recited in the credits given in said bill of particulars. That for sometime prior to June 28, 1903, the parties were engaged in negotiating an exchange of their respective properties. That an exchange was made on said date, and "as part and parcel of the same transaction," plaintiff "agreed to sell and deliver to said defendant the articles of personal property contained in his said house," as recited, and at the prices named in the bill of particulars. That "as part of the same transaction" defendant "agreed to, and did sell and deliver" to the plaintiff the said articles contained in her house at the prices named in said bill of particulars. That an adjustment was had upon said exchange of houses and personal property, and it was agreed that the amount fixed as the value of defendant's personal property, aforesaid, namely, $137, should be deducted from the price agreed to be paid plaintiff for his said property, namely, $433.83, and that the balance, namely, $296.83, should be paid by defendant in cash. That defendant has frequently admitted said indebtedness and though often demanded has refused to pay, etc.

Defendant filed the following affidavit in reply:

"I, Mary A. Dobbins, being first duly sworn according to law, say that I am the person named as defendant in the foregoing declaration in the suit of Frank H. Thomas against me, and known as law case 47377. That I have a good defense to said suit, which is as follows:

"1st. I did not purchase or exchange any goods or property with the said plaintiff, other than to exchange a certain dwelling house situated on the northwest corner of Thirteenth and Kenyon Streets, Columbia Heights, which house I exchanged for the property in which I now reside in Cleveland Park. That said exchange was made through a real estate agent, and affiant did not deal with the plaintiff, directly or indirectly, in any other matter other than the exchange of the real estate mentioned, nor did she authorize any one to do so.

"Affiant says that the goods taken in exchange, and mentioned in the bill of particulars as having been received from her in exchange for the goods charged against her, did not belong to her. That she had no dealings whatever with the plaintiff, and is not indebted to the plaintiff in any sum whatever.

"The defendant says further that the differences in the real estate were not adjusted by the price of the articles named and had no relation thereto. That the exchange of said real estate had nothing whatever to do with the personal property which is the basis of the plaintiff's

Digitized by Google

action. That she does not owe him anything. That the plaintiff has never made any demand for such sum of her, nor did he ever render her any statement of account for the transaction referred to until the filing of this suit, and she was surprised to learn that he meant to make claim against her for the amount."

1. It is questionable if the plaintiff's supporting affidavit was itself sufficient to entitle him to the judgment entered. The declaration does not set out a contract of sale and express promise to pay the prices claimed for the articles in the bill of particulars, but consists of the ordinary common counts for goods sold and received, etc. The affidavit, on the other hand, sets up a specific contract of sale at agreed prices, and does not attempt to support the common counts. This question was not raised on the trial, and we need not decide it, because the judgment must be reversed on another ground, and it may not again recur.

2. It is the well-settled construction of the 73d rule that while the affidavit of the plaintiff, which would deprive the defendant of his right to trial by jury, is to be construed with some strictness, that of the defendant must be accorded a fairly liberal interpretation. Bailey v. D. C., 4 App. D. C. 356, 370 : 22 Wash. Law Rep. 735; Lawrence v. Hammond, 4 App. D. C. 467, 474: 22 Wash. Law Rep. 749; St. Clair v. Conlon, 12 App. D. C. 161, 163: 26 Wash. Law Rep. 165; Strauss v. Hensey, 7 App. D. C. 289, 294 : 23 Wash. Law Rep. 842. As was said by Chief Justice Alvey in the case last cited: "The court can not question or traverse the truth of the facts stated in the defendant's affidavit. These facts the court is bound, for the purpose of securing to the defendant the right of trial, to assume as true, and that, too, without reference to what the plaintiff may have stated in his affidavit. If the facts stated by the defendant, by any reasonable or fair construction, will constitute a defense to the action or claim of the plaintiff within the scope of the pleas pleaded, it is the absolute constitutional right of the defendant to have that regularly tried and determined in the due course of judicial determination. No rule, however beneficial it may be thought to be as means of preventing the use of sham or feigned defenses, or desirable for the expedition of business, can deprive the defendant of this right." All that is required is that the facts alleged shall be sufficient to indicate a substantial legal defense made in good faith. Cropley v. Vogeler, 2 App. D. C 28, 32: 22 Wash. Law Rep.; Pumphrey v. Bogan, 6 App. D. C., 499, 451: 24 Wash. Law Rep. 302; St. Clair v. Conlon, 12 App. D. C. 161, 163: 26 Wash. Law Rep. 165; Magruder v. Schley, 17 App. D. C. 227, 231: 28 Wash. Law Rep. 870; Brown v. Bank, 18 App. D. C., 598, 606: 29 Wash. Law Rep, 819; Brewing Co. v. Tobin, 19 App. D. C. 353, 356: 29 Wash. Law Rep. 841.

Tested by the foregoing principles the defendant's affidavit contains a sufficiently distinct denial of the contract set up in the plaintiff's affidavit to entitle her to a trial of the issues in regular course, and the court erred in entering the judgment on the motion of the plaintiff.

3. The contention upon which the appellant apparently rested her case in the court below, and which has been chiefly relied on in the argument, is that being a married woman at the time of the alleged contract, she can not be held liable thereon.

Section 1151 of the Code declares that all the property belonging to a woman at the time of her marriage and all that she may acquire thereafter by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law, or a decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, shall be protected from the debts of the husband, and shall not in any way be liable for the payment thereof; provided that no acquisition passing from the husband shall be valid if made or granted in prejudice of the rights of his subsisting creditors.

Upon the face of the record, the property received by the plaintiff from the defendant belonged absolutely to her, and that delivered by him to her in exchange became her property also.

Section 1155 confers upon married women the power to engage in business, to make contracts, and provides that they may sue and be sued separately thereon as if they were unmarried. In case of judgments against them, execution may issue as if they were unmarried. And the husband is exempt from liability upon any contract made by his wife in her own name and upon her own responsibility. Section 1156 provides that: "Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract."

The contract alleged was one clearly within the power of the defendant, though a married woman, to make. It must be deemed to have been made with reference to her separate estate, there being no contrary intent expressed. She is therefore liable to be sued separately thereon, and in case of judgment against her, to have execution issue as if she were unmarried.

Notwithstanding these conclusions, it is further contended on behalf of the appellant that she is relieved from liability on the contract in question by the provisions of section 1177, which reads as follows:

"Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of the husband, or as his agent, or for necessaries for herself or for his or their children; but as to all such cases his liability shall continue as at common law."

The court was right in denying this contention. There is nothing to indicate that the contract was entered into upon the credit of the husband or as his agent; indeed, the wife has denied entering into any contract at all. Nor was it made affirmatively to appear that the items of personal property claimed to have been sold and delivered to the wife were necessaries for herself or for his or their children. But she

Digitized by Google

can not relieve herself of liability by hereafter showing that the articles were in fact necessaries. Section 1177 does not undertake to provide that she shall not render herself liable for necessaries when contracted for independently of her husband, but with reference to her separate estate; but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law.

It does not substitute the common law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party.

For the error committed as hereinabove pointed out, in respect to the general sufficiency of the defendant's affidavit, the judgment will be reversed, with costs, and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered. Reversed.

Life Insurance—Policy—Suicide.

A policy of life insurance provided that if the insured "die by his own hand or act, sane or insane, within three years from the date of issue of the certificate, then this agreement shall cease and be of no effect." Upon the trial of an action to recover the insurance under his policy it was shown that the holder killed himself. The Kentucky Court of Appeals held (Masonic Life Association of Western New York v. Pollard's Guardian) that the jury should have been instructed in substance that if he had mind enough to know that the act would probably result in his death, and if he inflicted it with that intention, it was his act in law, for which the company was not responsible. The court further held that the evidence showing him to be in his right mind; that he was in arrears as a collecting officer; that he had, shortly before his suicide, handed his insurance policy with a will to a friend, with the statement that if anything happened to him he desired it seen to that his children got those papers—in short, the proof showing that he shot himself while sane—there should have been an instruction to find for the insurance company.

Where the purchaser of property paid the consideration, but took the title in the name of a mortgagee, and applied for insurance thereon in the mortgagee's name, with the loss, if any, payable to himself as his interest might appear, the condition of the title being made known at the time the insurance was taken out, a condition of the policy, stipulating that it should be void if the interest of the assured should be other than unconditional and sole ownership, was waived. Loring et al. v. Dutchess Ins. Co. of Poughkeepsie, N. Y., 81 P. (Cal.) 1025.

Bills and Notes—Rights of Endorsee after Maturity.—The endorsee of a check after maturity, with notice of defenses, is protected where he received it from a party who received it before maturity, and without knowledge. Symonds v. Riley (Mass.), 74 N. E. Rep. 926.

Bank—Stockholders' Liability—Limitations.

The Supreme Court of the United States held, in the case of Rankin, Receiver, v. Barton, that a State statute of limitation can not be used to protect a stockholder of a failed national bank against liability on his stock. In this case an effort was made to enforce the individual liability requirement of the national banking laws in 1900, seven years after the suspension of the bank. The stockholder, Barton, pleaded the Kansas statute of limitations, which protects a debtor after three years, and the State Supreme Court sustained the plea, but its decision was reversed by the court of last resort at Washington.

Even in the days when he was a struggling young lawyer, Chauncey Depew was gifted with a considerable amount of self-confidence, which in later years came to be known by many men. One of the first cases he had in court involved a somewhat complicated question of inheritance. But he gaily tackled it and prepared what he regarded as an unanswerable argument. He had proceeded for some time when he noticed that the judge seemed to lose interest. Lawyer Depew hesitated and said, "I beg your pardon, but I hope your honor follows me." The judge shifted in his chair as he replied, "I have so far, but I'll say frankly that if I thought I could find my way out, I'd quit right here."

An agent of an insurance company clothed with authority to transact generally the company's business in a State and to collect the premiums, and grant permission to accept notes to himself in lieu of cash premium payments, the company looking to him instead of the policyholder, has authority to bind the company by accepting notes in lieu of cash payments of premiums, whether he paid the company or not. Mutual Life Ins. Co v. Abbey, 88 S. W. (Ark.) 950.

Lost Document—Secondary Evidence.—In Alabama Const. Co. v. Meador, decided by the Supreme Court of Alabama in April, 1905, 39 So. 217, it was held that evidence that plaintiff had left a letter with certain attorneys, that he had made diligent search for the letter on two different occasions, and that the attorneys had searched in the place where they kept their correspondence, etc., but without any proof by the attorneys with reference to the search made by them among their documents, or that the attorneys' evidence could not be produced, was insufficient to justify the introduction of secondary evidence as to contents.

Railroads—Effect of "M. C. B. Defect Card" on Car.—Placing a "M. C. B. defect card," noting defects forbidden by the safety appliance act, held not to relieve the railway company using it for responsibility. United States v. Southern Ry. Co., U. S. D. C., S. D. (Ill.) 135 Fed. Rep. 122.

Digitized by Google

Discharge of Employee for Disobedience of Reasonable Requirement.

In Costet v. Jeantet, decided by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, it is held that a master is justified in discharging an employee for disobedience to a reasonable requirement. It appeared that in his contract of employment the plaintiff had agreed that, when not engaged as traveling salesman, he would report at the defendant's store and assist in the work about the same. It also appeared, among other things, that the store was open every day at 7.30 in the morning; that all of the employees, except the bookkeeper, were there at 7.30 o'clock, and that the proprietors of the store were there at 7 o'clock. It was held, reversing a judgment in favor of the plaintiff, that the jury should have been instructed that a direction given to the plaintiff that he should attend at a certain hour, to wit, at 8 o'clock in the morning, was a reasonable requirement, and if they found as matter of fact that the plaintiff had disobeyed such direction the defendant was justified in discharging him.

Insurance—Loss—Referee—Waiver.

The Supreme Court of Minnesota held, in the recent case of O'Rouke v. The German Insurance Company of Freeport, Illinois, that in case a referee nominated by the insurer to adjust a fire loss arbitrarily and unfairly refuses to cooperate with his associate in selecting a third referee, and refuses further to act as a refeee, such conduct will constitute a waiver by the insurer of its right to have the loss adjusted by referees if it authorizes or approves, directly or indirectly, the action of its referee, and that where the insurer does not so authorize or approve the action of its refrree, but upon being advised thereof it refuses to agree to the selection of other referees, it thereby waives its right to an appraisal of the loss.

Bankruptcy—Preferences.—Grounds for reasonable belief in the present inability of a debtor to pay his debts in the course of business are not necessarily grounds for believing that he is insolvent, so as to require the creditor to surrender payments received as preferences. In re Pettingill & Co., U. S. D. C., D. (Mass.), 135 Fed. Rep. 218.

Bankruptcy—Provable Debts.—Liability of a bankrupt indorser of commercial paper which did not become absolute until after the filing of the petition held a provable debt. In re Philip Semmer Glass Co., U. S. C. C. of App., Second Circuit, 135 Fed. Rep. 77.

Partnership—Duties of Partners.—If a partner in the transaction of the partnership is guilty of concealment as to the other partners, and derives a benefit therefrom, he will be treated in equity as a trustee for the firm and may be compelled to account. McKinley v. Lynch (W. Va.), 51 S. E. Rep. 4.

Interest—Computation—Note.

The Kentucky Court of Appeals held, in the recent case of Hawkins et al. v. Merchants & Mechanics' Loan & Building Association, that the proper method of computing interest where there are partial payments upon a note is to compute the interest from the time it begins to run until the first payment; then subtract the payment and compute the interest on the remainder, and so on to the end; but that if the interest exceeds the pay ment, then it must be computed until such time as the payments exceed the interest then due. The court further held that in an action upon a note, while it is better pleading to set out the payments specifically, still a petition which set out that so much had been paid on the principal and that the interest was paid to a fixed date was good on demurrer.

Washington College of Law

1328 New York Avenue.

Reopens Monday, October 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

J. Paul Ernest, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Julia Fisher Campbell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1905. JOSEPH A. McKELLIP, 1321 Park ave., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,284. Admn. [Seal.] 47-3t

Digitized by Google

Legal Notices

Ernest L. Schmidt, Attorney
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Richard W. Ryan, Deceased.
No. 13,263. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edward B. Stumph, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to the **unknown heirs at law and next of kin of Richard W. Ryan** (deceased), and to all others concerned, to appear in said court on **Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 47-3t

Benjamin S. Minor and T. Percy Myers, Solicitors
In the Supreme Court of the District of Columbia.
Tillotson E. Brown et al. v. Charles W. Brown et al.
In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 20 feet front of lot numbered 8 in square 417, improved by premises No. 1811 Eighth street N. W., to Tillotson E. Brown for the sum of $1,425, and sublot numbered 22 in square 417 to Tillotson E. Brown for the sum of $969, it is, this 22d day of November, A. D. 1905, by the court, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown, on or before the **22d day of December, 1905.** Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 47-3t

William D. Hoover, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Helen Morse Janin**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS & TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,500. Administration. [Seal.] 47-3t

Roach & Watkins, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re the Estate of Rose Bray, Deceased.
No. 13,275.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will of said deceased, and for letters testamentary on said estate, by Margaret Watkins, the executrix named in said will, it is ordered this 22d day of November, A. D. 1905, that notice be and is hereby given to **James Boyle, Laurence Boyle, Rose Ellen Lunny, John Angier, William Bray, Richard Whitehead, Mary B. Clancy, Ann B. Smith**, and to all others concerned, to appear in said court on **Friday, the 22d day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. [Seal] 47-3t

Legal Notices.

Chas. W. Clagett, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Arthur Browning et al, Complainants, v. Sue E. Browning et al. Equity No. 28,912.

Upon consideration of the petition of Charles W. Clagett and D. W. Baker, trustees, filed herein on the 23d day of November, A. D. 1905, stating that Percival M. Brown, trustee for Sue E. Browning, under the original decree filed in this cause on the 26th day of May, 1903, is desirous of purchasing lots sixty-eight (68), sixty-nine (69), and seventy (70) in Frank T. Browning's subdivision of lots in square numbered three hundred and sixty-seven (367) as said subdivision is recorded in the office of the surveyor for the District of Columbia, in book 15, page 134, and lot numbered fifty-four (54) in the heirs of John Davidson's subdivision of square numbered three hundred and sixty-seven (367), as per plat recorded in liber N. K., folios 102 and 108, of the office of the surveyor for the District of Columbia, for the sum of twenty-two thousand five hundred ($22,500.00) dollars cash, free and clear of all incumbrances, provided that one-third (1/3) of the net proceeds of sale is set aside to Percival M. Brown, as trustee for Sue E. Browning, as required by said original decree, dated the 26th day of May, 1903, passed in the above entitled cause, it is this 23d day of November, A. D. 1905, ordered, that Percival M. Brown, trustee for Sue E. Browning, be and he is hereby authorized and directed to purchase the real estate hereinabove described upon the terms above set out. It is this ordered: That Charles W. Clagett, D. W. Baker, and Percival M. Brown, trustees for sale herein, be and they are authorized and directed to accept said offer to purchase said real estate, unless cause to the contrary be shown on or before the **18th day of December, 1905.** Provided that notice of said sale and this decree be published in The Washington Law Reporter once a week for three weeks prior to the said 18th day of December, 1905. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal.] 47-3t

Chas. W. Darr, Richard A. Curtin, Attorneys
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William Santry, also known as William Sauntry, Deceased.
No. 13,273. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Annie Collins, it is ordered this 20th day of November, A. D. 1905, that notice be and hereby is given to **Ellen O'Brien, Jeremiah Driscoll, Patrick Santry, Michael Santry, Jeremiah Santry, Annie Santry, Annie Rawlette, Katie Carpenter, Margaret Carpenter, John Carpenter, Joseph Carpenter, May Carpenter, and Lily Carpenter**, and to all others concerned, to appear in said court on **Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal.] 47-3t

W. L. Pollard and M. N. Richardson, Solicitors
In the Supreme Court of the District of Columbia.
Soloman H. Jones et al. v. Andrew J. Miller et al.
No. 25,108. Equity Docket No. —.

The object of this suit is to remove cloud upon title lot 8, square 315, in city Washington, District of Columbia. On motion of the complainant, it is, this —— day of November, A. D. 1905, ordered that the defendants, **Andrew J. Miller, Margaret V. Thompson, and Jessie McGlinchy**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and Evening Star once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 47-3t

Digitized by Google

Legal Notices.

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ulrich Banf**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. AMELIA E. ZIMMERMAN, 628 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,290. Administration. [Seal.] 47-3t

Chas. W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Catherine Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. PETER A. DRURY, 1432 Binney st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,266. Administration. [Seal.] 47-3t

Chas. Linkins, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles J. B. Schutz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. JOHN C. SCHUTZ, 1450 Howard ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,274. Administration. [Seal.] 47-3t

Carlisle & Johnson, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin.
No. 10,117. Adm. Docket, 28.

On consideration of the petition of Georgia Anne O'Neill, executrix, it is by the court, this 22d day of November, A. D. 1905, ordered that the sale of lot twenty-one in Webb and Bradley, trustees' subdivision of square five hundred and twenty-eight (528) as per plat recorded in Liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Jeremiah Murphy, at and for the sum of $6,500, cash, subject to the payment to James F. Shea, of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed, unless cause to the contrary be shown, on or before the **23d day of December, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day.
[Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 47-3t

Arthur Peter, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frederick L. Collins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. KATHARINE V. COLLINS, No. 1633 34th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,259. Administration. [Seal.] 47-3t

Legal Notices.

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Alonzo J. Eaton, Deceased.
No. 13,248. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, or for letters of administration on said estate, by Alonzo J. Eaton, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to **Bernard L. Eaton**, and to all others concerned, to appear in said court on **Thursday, the 4th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before
[Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alexander Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of November, 1905. JAS. J. CAMPBELL, Room 712, Carnegie Bldg., Pittsburg, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,277. Admn. [Seal.] 47-3t

Jos. H. Stewart, Attorney
In the Supreme Court of the District of Columbia,
Holding a Special Term in Probate Court.
In re Estate of Milly Cook, Deceased.
No. 12,477.

This cause coming on to be heard upon the supplemental petition of the executor filed herein, and the same having been considered by the court, it is, this 22d day of November, 1905, by the court, ordered that said **Frank Rollins**, the alleged heir of Milly Cook, deceased, show cause on or before the **22d day of December, 1905**, why the last will and testament of said deceased should not be admitted to probate and record. Provided that this order be published once a week in The Washington Law Reporter and The Record, a weekly newspaper, published in Washington, D. C., for
[Seal] three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills. 47-3t

SECOND INSERTION.

Wm. Herbert Smith, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert H. Montgomery, Deceased.
No. 13,217. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia A. Montgomery, it is ordered this 13th day of November, A. D. 1905, that notice be and hereby is given to **Rachel Elliot, Susan Oakes, Anne Montgomery, and Sarah E. Rogers**, and to all others concerned, to appear in said court on **the 18th day of December, 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before
[Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

Digitized by Google

Legal Notices.

John B. Larner, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Letts**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-3t

Lorenzo A. Bailey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael Flaherty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of November, A.D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1905. BRIDGET FLAHERTY, 1300 Del. ave, S.W., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,280. Administration. [Seal.] 46-3t

Smith Thompson, Jr., Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
In re Estate of Susan Perry, Deceased.
No. 10,180. Administration.

It appearing to the court that John T. Wood, executor, has reported a bid of twenty-five dollars ($25.00) each for lots 1, 2, and 3, in block 7, section 3, in Burrville, District of Columbia, from William B. Johnson, it is this 16th day of November, 1905, ordered that the sale of said lots to William B. Johnson at the above price be ratified and confirmed, unless cause to the contrary be shown on or before the **16th day of December, 1905**; provided a copy of this order be published in the Washington Law Reporter once a week for each of three [Seal] successive weeks before said last-named day. By the court: WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Harry G. Kimball, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c.t.a. on the estate of **Howard Markward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of November, 1905. GEORGE H. MARKWARD, 609 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,268. Administration. [Seal.] 46-3t

Jno. Ridout, Attorney

In the Supreme Court of the District of Columbia,
Frank J. Dieudonne, Plaintiff, v. Liquid Carbonic Company, Defendant.
At Law, No. 47,944.

The object of this suit is to recover damages for breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 27th day of October, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once [Seal] a week for three successive weeks before the return day of this order. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. 46-3t

Legal Notices.

B. F. Louchs, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Estate of Ephraim A. Greenough, Deceased.
No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court the sale of sublot No. 16 in square No. 781, improved by house No. 328 Massachusetts avenue n. e., in the city of Washington, District of Columbia, to Charles E. Rice for the sum of five thousand five hundred and forty-five dollars ($5,545), subject to a deed of trust for five thousand dollars and sixty-two dollars and fifty cents interest thereon, it is, this 10th day of November, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the **11th day of December, 1905**. Provided that a copy of this order be published in the [Seal] Washington Law Reporter once a week for three successive weeks before said last-mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Lancaster & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Frazier, Deceased.
No. 13,256. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Laura C. Frazier, it is ordered this 15th day of November, A. D. 1905, that notice be and hereby is given to **John Frazier, Ephraim Frazier, and Harry Frazier**, and to all others concerned, to appear in said court on **Monday, the 18th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 917 O street northwest, in the city of Washington, District of Columbia, being lot numbered nine (9) in Samuel Redfern's subdivision of square numbered three hundred and sixty-six (366), to the Deaconess Board of the District Woman's Home Missionary Society of the Baltimore Conference, a body corporate, of which said executor is one of the trustees, for sixty-five hundred ($6,500) dollars net, all cash, it is, by the court, this 15th day of November, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **15th day of December, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Jno. Ridout, Attorney

In the Supreme Court of the District of Columbia.
Henry H. Meyer, Plaintiff v. The Standard Stone Manufacturing Company, Defendant.
At Law, No. 47,935.

The object of this suit is to recover an amount due to plaintiff from defendant on open account and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this **27th day of October, 1905**, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once a week for three successive [Seal] weeks before the return day of this order. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. 46-3t

Digitized by Google

Legal Notices.

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Charles C. Walter**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 8th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of November, 1905. LEON TOBRINER, LIZZIE M. WALTER, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,223. Administration. [Seal.] 46-3t

William D. Hoover, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Aaron Stern**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 5th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,394. Adm. [Seal.] 46-3t

Wilson & Barksdale, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Kate Ross, Deceased.
Probate No. 13244.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of Kate Ross and for letters testamentary, by Frank E. Gibson, as executor, it is this 10th day of November, 1905, ordered that **John W. Ross, Charles Riddle, Richard Anderson, William Anderson, Mary E. Denny, —— Smith, and the unknown heirs at law and next of kin of said Kate Ross**, and all others concerned, appear in said court on **Thursday, the 14th day of December, 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks [Seal] before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Carl Hugo Ziemann**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 26th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 13th day of November, 1905. LEON TOBRINER, AUGUST DAETZ, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,314. Administration. [Seal.] 46-3t

Legal Notices.

William G. Henderson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary A. M. Smith, Deceased.
Administration. No. 12,145.

Henry Calver, executor, having reported to the court the sale of a certain piece of property belonging to the estate of the decedent, said piece of property being known as premises No. 1248 23d st. N. W., in the city of Washington, District of Columbia, and being lot D, in square 36, as designated in the ground plat or plan of the said city, together with improvements thereon, to James B. Wimer, for six hundred dollars ($600); it is, by this court, ordered and decreed that the sale be ratified and confirmed, unless cause to the contrary be shown on or before the **11th day of December, 1905**; provided that a copy of this order be published once a [Seal] week for three successive weeks before said last-mentioned date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Robinson White, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles White**, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of November, 1905. JANE M. WHITE, care of Robinson White; CHAS. WHITE, Jr., 418 O st. S. W.; JENNIE W. FUGITT, 109 11th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13271. Administration. [Seal.] 46-3t

THIRD INSERTION.

T. Percy Myers, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **John A. Barber**, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of November, 1905. J. WILLIAM HENRY, 1319 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,255. Administration. [Seal.] 45-3t

J. H. Lichliter, Attorney
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of John W. Smith, Deceased.
No. 13,238. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Emma J. Smith, widow of said deceased, it is ordered, this 8th day of November, A. D. 1905, that notice be and hereby is given to **Thomas Leander Smith, Della Bell Smith, Dessa Bell Smith, Etta Alma Smith (infant), Lotus Mae Smith (infant), La Fayette P. Ripley, Leffingwell D. Ripley, Frank N. Ripley, Elizabeth J. Ripley, Edna (or Etna) V. Harwood, Grace Kaufer, Ida B. Berger, and Arthur S. Thompson**, all non-residents of the District of Columbia, and to all others concerned, to appear in said court on **Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN- [Seal] DELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-3t

Digitized by Google

Legal Notices.

Ellwood O. Wagenhorst, Solicitor

In the Supreme Court of the District of Columbia.

Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedian, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, Susan E. Hedian, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D, 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, Susan E. Hedian, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] nov. 10, 17, 24; dec. 1.

Berry & Minor, Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

William Peyton Tucker and Nathaniel Beverley Tucker, Complainants, v. Henry W. Bartol, E. Welsh Ashford, and Erwin Cyrus Brainerd, Respondents. Equity, No. 25,746.

The object of this suit is to substitute trustees in the place and stead of E. Welsh Ashford and Erwin Cyrus Baumgras (now Erwin Cyrus Brainerd), under a deed of trust dated September 13, 1900, and recorded in liber 2520 at page 118 of the land records of the District of Columbia, from William Peyton Tucker and Nathaniel Beverley Tucker and wife to E. Welsh Ashford and Erwin C. Baumgras (now Erwin Cyrus Brainerd), trustees, conveying lot 50 in Frank L. Hanvey's subdivision of lot 8 in block 34, "Columbia Heights," in the city of Washington, District of Columbia. On motion of the complainants, by their solicitors, Berry & Minor, and it appearing to the court that the summons issued herein against the respondent, E. Welsh Ashford, has been returned "not to be found," and the non-residence of the said respondent having been proved to the satisfaction of the court, it is, this 8th day of November, 1905, ordered that the said respondent, E. Welsh Ashford, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 45-3t

---

Andrew B. Duvall, E. H. Thomas, Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Snowden W. Robinson, Complainant, v. Alvira Robinson, Sewell R. Duley et al., Defendants.

Equity No. 25,770. Doc. 57.

The object of this suit is to appoint a new trustee for the estate of James S. Robinson, deceased. On motion of the complainant, it is this 9th day of November, 1905, ordered that the defendants, Mary A. Collins and Mary Edna Collins, infant, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three (3) successive weeks in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal.] 45-3t

Legal Notices.

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Joseph E. McDonald**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of November, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. JESSIE C. McDONALD, Colorado Building, Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,286. Administration. [Seal.] 45-3t

---

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia,

Alexander B. Hagner, in His Own Right, and as Executor, et al., Complainants, v. John H. Walter, Trustee, et al., Defendants. No. 25,589. Equity Docket 57.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, Washington, D. C., beginning for said part of said lot at the northeast corner of lot 9, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 9th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, ——Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, Junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] nov 10, 17, 24; dec 2, 9; jan 5, 12.

Samuel Maddox, Solicitor

In the Supreme Court of the District of Columbia.

Hattie Hicks et al., Complainants, v. Margaret R. Trotter et al., Defendants. Equity No. 23,164.

Upon consideration of the report of H. Prescott Gatley, trustee, herein filed, it is this 6th day of November, A. D. 1905, ordered that said trustee be, and he is herby, authorized and directed to sell to Florence A. DeLong lot 20 of Daniel Birtwell's subdivision of lot 10, block 13, Rosedale and Isherwood, for the sum of $860, cash; and that said sale, so made, shall be ratified and confirmed, unless cause to the contrary be shown on or before the **7th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 45-3t

---

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Digitized by Google

Legal Notices.

R. Ross Perry & Son, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **John Caldwell Poor**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of November, A.D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1905. ELLA POOR, care of R. Ross Perry & Son. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,224. Administration. [Seal.] 45-3t

Wm. E. Harvey, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration d.b.n. on the estate of **Daniel A. Connelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of November, 1905. WILLIAM B. KING, 728 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 1179. Administration. [Seal.] 45-3t

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

The Springfield Fire and Marine Insurance Company, a Corporation, Complainant, v. John B. Wight et al., Defendants. Equity No. 25,122.

Charles S. Shreve, Jr., and William F. Hall, trustees, having reported to the court that they have received a private offer to purchase lots, viz: All of lots D, E, F, G, H, and I, in Gideon L. Walker's subdivision of lots in square numbered one hundred and seventy-two (172), as per plat recorded in liber R. W., folio 126, surveyor's office, D. C., more fully described in the original order of sale herein, from John M. Clapp, for the sum of ninety-five hundred dollars ($9,500), all cash, it is, by the court, this 7th day of November, A. D. 1905, ordered that said offer be accepted and said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **9th day of December, A. D. 1905.** Provided that a copy of this order be published once a week for three successive weeks prior to said last mentioned date in The Washington Law Reporter. [Seal] By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. nov 10, 17, 24

B. H. Loucks, Solicitor

In the Supreme Court of the District of Columbia,

Holding a Court of Equity.

In the Matter of Composite Brick Manufacturing Co., a Corporation. Equity. No. ——.

It appearing to the court that a petition has been filed herein praying that the Composite Brick Manufacturing Company, a corporation, organized under the laws of the District of Columbia, be dissolved as provided by section 768 of the Code of the said District and for other relief, it is, this 7th day of November, ordered that notice of this application be given to all persons concerned and requiring all persons concerned to appear in this court and show cause, if any they have, on the **11th day of December, 1905**, why the said corporation should not be dissolved, a receiver appointed to take charge of the assets of said corporation, and for general relief. It is further ordered that this order be published in The Washington Law Reporter and in The Washington Post once a week for three successive weeks, the first insertion to be not less than one month before said return day. It is further ordered that a copy of this order be mailed to all stockholders, bondholders, and creditors whose names appear in said petition thirty days before said return day. [Seal] THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 45-3t

Legal Notices.

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Susana Griswold**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 27th day of November, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of November, 1905. GEORGE PRINCE, by Wolf & Rosenberg, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,496. Admn. [Seal.] 45-3t

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the States of Illinois and Georgia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Hannah Lavinia Bartlett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **7th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of November, 1905. WILLIAM HOLABIRD, Monodnock Block, Chicago, Ill.; JOSEPH WILLARD PRESTON, 407 Equitable Building, Atlanta, Ga. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,193. Administration. [Seal.] 45-3t

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.

Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants.

No. 25,588, Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 3½ inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3½ inches; thence south 183 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3½ inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and alienees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —— Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. [Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. nov 10-17-24; dec 2-9; jan 5-12

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 48

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - DECEMBER 1, 1905

CONTENTS.

Editorial 753
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
J. Charles McGuire et al, appellants, v. Louis Gerstley et al 754
John W. Clark, appellant, v. Louis Gerstley et al. 758
Frank S. Cahill et al, plaintiffs in error, v. District of Columbia 759
Legal Notices 762

Antecedent Debt as Consideration for Note—Negotiable Instruments Law.

Section 51 of the Negotiable Instruments Law of New York, which is identical in terms with section 1329 of the Code of this District, is as follows:

"Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such, whether the instrument is payable on demand or at a future time."

The New York Law Journal, in a recent issue, calls attention to a variant construction of this section made by the Supreme Court of New York. In Sutherland v. Mead, 80 App. Div. 103, it was held that the section should be construed to mean that, for an antecedent or preexisting debt to constitute value which will support an action against the accommodation makers or indorsers of a note which has been fraudulently diverted, the antecedent debt must have been canceled and discharged on the acceptance of the note.

In Roseman v. Mahoney, 86 App. Div. 377, it was held, construing the same section, that a note given as security for a preexisting debt is not enforcible in the hands of the creditor against an accommodation indorser thereof; that in order to be enforcible against the accommodation indorser it must appear that the note was taken in payment of the preexisting debt, or that the creditor extended the time for the payment thereof.

On the other hand, it was held in the case of Brewster v. Shrader, 26 Misc. 480 (special term), that the holder of a time note taken merely as collateral security for an antecedent debt may enforce it against an indorser in fraud of whose rights it had been diverted from the purpose for which it was made; that the former rule in that State had been changed by section 51 of the Negotiable Instruments Law; and that the new statutory rule includes negotiable instruments which have been given as collateral security merely.

Conduct of a Party as an Admission.

In Neece v. Neece, decided by the Supreme Court of Appeals of Virginia (51 S. E. 739), it appeared that the appellant, who claimed rights adverse to the widow and children of a deceased person, shortly after his decease produced an alleged will (probate of which was subsequently denied), and took possession of important documents relating to the title, and they were never afterwards returned by him or seen by any member of the decedent's family. The court held that such conduct on his part was significant with the effect of an admission; and in this connection the court said in part:

"In general, a party's conduct, so far as it indicates his own belief in the weakness of his cause, may be used against him as an admission, subject, of course, to any explanations he may be able to make removing that significance from his conduct. In particular, 'falsehood is a badge of fraud, and a case which is sought to be supported by means of deception may prima facie, until the contrary be shown, be taken to be a bad and dishonest case; and this applies equally to civil and criminal cases. . . . So, also, the attempt to suppress evidence by intimidating or removing witnesses is admissible, as having 'a tendency to show consciousness in him of title in the opponent.' Concealing or destroying evidential material is likewise admissible; in particular, the destruction (spoliation) of documents, as evidence of an admission that their contents are as alleged by the opponents'. (1 Greenleaf Ev., 16th Ed., p. 325, sec. 195)."

MR. GUS A. SCHULDT, for several years identified with the office of the corporation counsel of this District, has been appointed by the Commissioners as assistant to Mr. A. Leftwich Sinclair, who has special charge of condemnation proceedings on behalf of the District. The duties of Mr. Sinclair in this connection are most important and at the same time very exacting, and he will find in Mr. Schuldt a capable assistant. The vacancy in the office force of the corporation counsel caused by Mr. Schuldt's promotion has been filled by the appointment to the position of Mr. Wm. H. Wahly, a well-known young member of the bar of this District.

Digitized by Google

Court of Appeals of the District of Columbia.

J. CHARLES McGUIRE ET AL., APPELLANTS,
v.
LOUIS GERSTLEY ET AL.

PLEADING; SET-OFF; BONDS; PRINCIPAL AND SURETY; CONTEMPORANEOUS AGREEMENT; EVIDENCE; DAMAGES FOR TORT NOT BASIS OF SET-OFF; RECOUPMENT.

1. A plea of set-off must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were plaintiff in an action thereon; and while the technical formality and accuracy of a declaration may not be required, the plea must inform the plaintiff with reasonable certainty of the particulars of the demand he is called on to defend.
2. Where a bond recited that the principals were desirous of purchasing merchandise from the obligees, to be paid for in four months from the date of each purchase, and was conditioned merely for prompt payment therefor when and as the bills became due and payable, in an action thereon joint pleas of set-off filed by one of the principals and the sureties attempting to set up the breach of an agreement claimed to have been made between the obligees and the principals contemporaneously with the execution of the bond, held defective, and a demurrer thereto properly sustained.
3. In the absence of any allegation that an alleged agreement made between the principals and the obligees in a bond contemporaneously with its execution was to be incorporated into the bond or referred to therein as creating a dependence of one upon the other, and that it was omitted through mistake, accident, or inadvertence, parol evidence is not admissible to establish such agreement and the breach thereof so as to discharge the sureties on the bond from liability; and a demurrer to a plea setting up such agreement is properly sustained.
4. Damages for a mere tort can not be made the basis of a plea of set-off. Held, therefore, in an action on a bond given by a partnership to secure payment for merchandise purchased by it, that a plea by the sureties setting up that they had been damaged by the fact that the partnership had been terminated by the malicious persuasion of the obligees in the bond, was bad, whether regarded as pleaded by way of set-off or recoupment, and a demurrer thereto properly sustained.
5. Defenses by way of recoupment not immediately connected with or arising out of the same contract on which the plaintiff relies to maintain his action, are not permitted.

No. 1550. Decided November 8, 1905.

APPEAL by two of several defendants from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,367, entered upon demurrer to defendants' pleas, they having elected to stand upon their pleas. Affirmed.

Mr. L. A. Bailey for the appellants.

Mr. Simon Wolf, *Mr. Myer Cohen*, and *Mr. Eugene A. Jones* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the court.

The appellees, Rosskam, Gerstley & Co., brought this action against John F. Monaghan, J. Charles McGuire, John W. Clark, and William McGuire, upon a bond executed by them, under seal, on September 11, 1903, and binding them to the plaintiffs in the sum of $5,000. The purpose and condition of the said bond read as follows:

"Whereas the above bounded John F. Monaghan and J. Charles McGuire are desirous of purchasing merchandise from Rosskam, Gerstley and Company, now and from time to time hereafter, which the said John F. Monaghan and J. Charles McGuire have bound and hereby bind themselves to pay for in four months after the date of each respective purchase.

"Now, therefore, the condition of the foregoing obligation is such, that if the said John F. Monaghan and J. Charles McGuire shall strictly and faithfully pay or cause to be paid to said Rosskam, Gerstley and Company, for merchandise now and hereafter so purchased, the moneys due and to become due thereon when and as the same shall become due and payable, then this obligation shall be null and void; otherwise it shall remain in full force and virtue."

The declaration alleges that Monaghan and J. Charles McGuire purchased merchandise of the plaintiffs to the amount of $14,497.16, upon which a balance of $5,396.68 is due and unpaid. A statement of the account shows the various items of merchandise with dates of sales, commencing with September 24, 1903, and ending July 27, 1904, and also the items and dates of credit allowed.

Judgment by confession was entered against Monaghan January 27, 1905.

On February 6, 1905, J. Charles McGuire and William McGuire filed two joint pleas of set-off. The first of these alleges that plaintiffs are indebted to Monaghan and J. Charles McGuire in the sum of $10,000, for this, that on August 25, 1903, plaintiffs entered into a certain agreement with said Monaghan and McGuire, that if the latter would form a partnership to carry on the business of wholesale liquor dealers in the District of Columbia and deal in the merchandise to be furnished by plaintiffs, and would furnish plaintiffs with a bond in the sum of $5,000, with John W. Clark and William McGuire as sureties, conditioned for the payment of the indebtedness to that amount to be incurred by said Monaghan and McGuire, then plaintiffs would furnish Monaghan and McGuire, from time to time, when requested, "and at certain prices then specified and agreed upon by the parties to said agreement," and would allow them a continuous credit of $10,000; and that said Monaghan and McGuire should sell the same to their customers "upon such terms, as to time and otherwise, as the said Monaghan and McGuire should find and believe to be the best terms attainable, having in view the establishment and maintenance in said District of a demand for the plaintiffs' goods, and that the said Monaghan and McGuire would not be required to pay for said goods so sold to their customers, until they could make collections therefor from their said customers." And it was further understood that said Monaghan and McGuire would enter upon said business without capital other than the continuous credit aforesaid, and that, in order to perform their agreement, they would be compelled to make sales to their customers upon credit, in periods varying according to the circumstances aforesaid; that Monaghan and McGuire formed the said partnership, furnished the said bond, and began business as aforesaid; that at great labor and expense, they obtained about eighty customers, to whom they sold on credit the goods purchased from plaintiffs; that on December 10, 1903, the plaintiffs, with intent to destroy the business so established, and to

Digitized by Google

sell goods directly to said customers drew upon them for $1,500, and wrongfully refused to furnish them any more goods at the prices agreed upon, but demanded a large increase thereof, and thereby forced them to abandon their business, which they had established at an expense of $10,000, and in which their profits were great. That they thereby destroyed the said business and violated the said agreement to the damage of each of said partners in the sum of $10,000, for which J. Charles McGuire claims judgment against the plaintiffs; and defendants are willing shall be set off against the plaintiffs' demand.

The second plea is substantially of the same effect.

William McGuire subsequently filed three additional pleas.

The first plea sets out, briefly, but substantially, the agreement with Monaghan and McGuire, as recited in the first and second pleas before stated, and that defendant subscribed the bond as surety for them in performance of said agreement. It then alleges that through the breach of the agreement by plaintiffs, Monaghan and McGuire were prevented from paying for the merchandise furnished them, and thereby defendant has been damaged in the sum of $5,000, which he pleads in set-off.

The second additional plea avers the making of the said agreement, in consideration of which defendant executed the bond, as in the first plea stated. It then further avers that afterwards, on to wit, December 11, 1903, plaintiffs, without the knowledge or consent of defendant, entered into another agreement with Monaghan and McGuire, by which the prices were changed to the prejudice of defendant, and then again refused to sell merchandise to Monaghan and McGuire, whereby defendant was discharged from all liability on said bond.

The third additional plea avers that all of the merchandise described in the bill of particulars was purchased under the terms of certain agreements not under seal, entered into from time to time before and since September 11, 1903, and not under or according to the terms of the obligation sued on, wherefore defendant has been discharged.

Defendant then filed three additional pleas.

The first of these (numbered 4) alleges the general agreement between plaintiffs and Monaghan and McGuire, and then adds that plaintiffs agreed to sell them goods "at, and for certain prices specified in a letter dated August 25, 1903, and sent by the plaintiffs to said Monaghan, and the plaintiffs then represented to this defendant that the said agreement was applicable to all merchandise to be purchased under said writing obligatory, which said letter was so sent and said representations were so made and caused to be made by the plaintiffs with the intent on their part thereby to induce this defendant to execute said writing obligatory, and this defendant, believing said representations to be true, and relying thereon, did set his seal," etc. That thereupon, Monaghan and McGuire purchased merchandise amounting to $14,477.16 and no more, of which sum $10,617.55 was for merchandise purchased at the prices aforesaid, and the remainder, $3,859.61 was for merchandise purchased at prices greatly exceeding the same, under another agreement made about December 11, 1903, without this defendant's knowledge or consent. That Monaghan and McGuire have received the sum of $9,100.48 on said first named amount leaving due under said bond the sum of $1,517.07 and no more.

The next additional plea (numbered 5) sets out the general agreement as before, but adds thereto that it was agreed that the merchandise sold should never exceed $10,000. That plaintiffs failed to perform that condition, or any other, and permitted the indebtedness of Monaghan and McGuire to exceed the said sum, whereby defendant has been discharged of his liability under said bond.

The last additional plea reads as follows:

6. And this defendant William McGuire, for a further plea to the said declaration, says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that on or about the date thereof, to wit, September 11, 1903, the defendants John F. Monaghan and J. Charles McGuire entered into a copartnership agreement between themselves to engage in the liquor business under the firm name of Monaghan and McGuire, and to deal in the goods of the plaintiffs, and during the year 1903 the said Monaghan and McGuire established said business and dealt in said goods with great profit to themselves and to the plaintiffs; that said writing obligatory was delivered to the plaintiffs for the purpose of establishing and maintaining the credit of said Monaghan and McGuire with the plaintiffs, and of maintaining said business; but on or about the 12th day of January, 1904, the plaintiffs, well knowing the premises, and with the intent to secure to themselves the customers and business which had been before that time obtained and established by said Monaghan and McGuire, and to sell directly to such customers, and thus increase the profits of the plaintiffs, wrongfully enticed and induced the said Monaghan to withdraw from said copartnership and to enter the employ of the plaintiffs, and as agent of the plaintiffs to sell their goods to said customers; and thereupon the said Monaghan, yielding to said enticement and inducement, did withdraw from said copartnership and did enter the employ of the plaintiffs as and for the purposes aforesaid, and thereby the business of said copartnership was wholly destroyed, and said Monaghan and McGuire by reason thereof became and were unable to pay the plaintiffs for the merchandise referred to in said writing obligatory; all which the enticement and inducement by the plaintiffs and their employment of said Monaghan as aforesaid were without the consent or knowledge of this defendant, who was thereby wholly discharged of and from all liability under or by reason of said supposed writing obligatory.

Demurrers were sustained to each of the foregoing pleas, and defendants, J. Charles McGuire and William McGuire, electing to stand upon said pleas, judgment was entered against them for $5,000 on February 24, 1905. From this they have jointly appealed.

1. The court did not err in sustaining plaintiffs' demurrer to the joint pleas of set-off filed

Digitized by Google

by J. Charles McGuire and William McGuire, principal and surety, respectively.

The plea of set-off is in the nature of a cross action by the defendant, who, it is declared in the code, "shall be deemed to have brought an action at the time of filing such plea against the plaintiff for the matters mentioned in the plea." When such plea has been filed, the plaintiff may not discontinue his action without the defendant's consent, and, whether he undertakes to maintain his claim or not, "the defendant shall be entitled to a trial of, and judgment upon, his claim." Sec. 1565; Samaha v. Samaha, 18 App. D. C. 76: 29 Wash. Law Rep. 176.

It follows, necessarily, that the plea must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend. Crawford v. Simonton, 7 Post. (Ala.) 110, 126; O'Brien v. Anniston Pipe Works, 93 Ala. 582, 584; Garrett v. Love, 89 N. C. 205, 207; Waterman on Set-off, secs. 646, 648; Ency. Pl. & Pr. 751, 752.

The two pleas fail under the application of this test. Without reference to the general vagueness of allegation, it is sufficient to say that they are notably defective in respect of the agreement claimed to have been made between the plaintiffs and Monaghan and McGuire for the sale of merchandise, and of the manner in which that agreement was violated to the injury of them and their sureties. If there was an agreement between the plaintiffs and the principals, of which the contract of the sureties formed a part, and the breach of which occasioned recoverable damage, it was incumbent upon them to set out the terms of the same and the acts of breach with reasonable certainty. What has been said applies also to the first and fourth separate pleas of set-off by William McGuire, the surety.

2. The errors assigned on the striking out of the second, third, and fifth separate special pleas of the surety, William McGuire, can be considered together, as they rest upon substantially the same ground. As general defenses to the action against the surety, they substantially repeat the allegations of the pleas of set-off that have been considered. The fourth plea goes a little further in respect of the agreement made for the sale of merchandise than the others, by alleging that it was contained in a certain letter, which, however, is not set out, nor are its contents in respect of terms, prices, etc., alleged. The fifth plea omits the reference to the letter, but adds another item of the general agreement which it alleges the violation of, namely, that plaintiffs would never permit the indebtedness of Monaghan and McGuire to exceed $10,000.

It is questionable if these pleas were sufficiently certain and definite; but assuming that they do state an agreement between the plaintiffs and the principals in the bond, and a breach of that agreement by the plaintiffs, we are of opinion that the court did not err in sustaining the demurrer to each of them.

The sureties, Clark and William McGuire, had no connection with the business of Monaghan and McGuire. One feature of the negotiations, and the alleged agreement between them and plaintiffs, was that they should furnish the surety bond. Clark and William McGuire brought themselves solely under obligation by executing the bond. This recites that Monaghan and McGuire are desirous of purchasing merchandise from plaintiffs, "now and from time to time hereafter," which they "have bound and hereby bind themselves to pay for *in four months after the date of each respective purchase;*" and the condition is that if the said Monaghan and McGuire "shall strictly and faithfully pay or cause to be paid to" plaintiffs, "for merchandise now and hereafter purchased, the moneys due and to become due thereon *when and as the same shall become due and payable*, then this obligation shall be null and void; otherwise," etc. This bond neither incorporates nor refers to the alleged contemporaneous agreement between the principals and the obligees relating to the prices of the merchandise, or the gross amount of sales that might be made upon credit. Contemplating that the credits might exceed $5,000 the sureties expressly limited their liability to that amount. Having fixed this limit, the bond recites what may have been a special stipulation of a general agreement with the principals, and which was of apparent importance to the sureties, namely, that each separate sale of merchandise shall be upon a credit of four months. The bond is, therefore, upon its face, complete in itself, and has no relation to, or dependence upon, a general contemporaneous agreement with the principals relating to the business to be carried on between them and the obligees. It is not pretended that by the agreement the principals were bound to deal exclusively with the plaintiffs, and it is reasonable (in fact, a different arrangement would seem extraordinary) that in commencing a business to continue indefinitely future prices would be regulated by a varying market, and amounts of sales by the needs of a probably increasing volume of business. The bond does not provide for or against such contingencies, either expressly or by inference, but confines itself to a limitation of the amount of the surety's liability and the credits to be given on each sale. In the absence of any agreement with the surety to the contrary, the law imposes no restriction upon arrangements between principals and obligees that may affect the terms and volume of their continuing business. Domestic S. M. Co. v. Webster, 47 Iowa, 357, 361; Amicable Life Ins. Co. v. Sedgwick, 110 Mass. 163, 166. Both of those cases were actions upon surety bonds, and are directly in point. See, also, Stuts v. Strayer, 60 Ohio St. 384, 387; U. S. Glass Co. v. Matthews, 61 U. S. App. 542, 547. The bond, not being by any of its terms dependent upon the agreement between the principals and obligees, the relation between them must depend for its establishment upon parol evidence. In the absence of any allegation that the agreement was to be incorporated in the bond, or referred to therein as creating a dependence of one upon the other, and that it

Digitized by Google

was omitted through mistake, accident, or fraud, such evidence is inadmissible. Domestic S. M. Co. v. Webster, 47 Iowa, 357, 361; Seitz v. Brewer's Refrigerating Co., 141 U. S. 510, 517; Purity Ice Co. v. Hawley Furnace Co., 22 App. D. C. 573, 591: 31 Wash. Law Rep. 742; Knight v. Walker Co., 23 App. D. C. 519, 524: 32 Wash. Law Rep. 327; Newman v. Baker, 10 App. D. C. 187, 194: 25 Wash. Law Rep. 170.

It is to be remembered, moreover, that the bond is not merely silent in respect of the alleged contemporaneous agreement, but expressly incorporates one of its stipulations, of obvious importance to the risk assumed by the sureties, namely, that fixing the credit periods.

It is hardly necessary to remark that there is no allegation in the pleas that the bond was not to take effect as an obligation, except upon the performance of a definite, *precedent* condition, as in Burke v. Dulany, 153 U. S. 228; and Donaldson v. Uhfelder, 21 App. D. C. 489; 31 Wash. Law Rep. 428.

3. The sixth special plea of the surety, William McGuire, heretofore recited, must be separately considered.

This plea is not technically one of set-off within the form prescribed by the Code (Sec. 1564), but rather of recoupment, although it has been argued in both aspects.

(1) Treating it as a plea of set-off and assuming that a valid claim for damages comes within the definition of "an indebtedness of the plaintiff to the principal," which the surety might set off under the provisions of section 1568, it is, nevertheless, substantially defective. If it were made the ground of an original action by the other partner, J. Charles McGuire, it would be subject to demurrer, because it does not appear that the partnership with Monaghan, who, it is alleged, terminated it under the malicious persuasion of the plaintiffs, was one for any specified term of duration. No action would lie against Monaghan for terminating a partnership at will. Karrick v. Hahneman, 168 U. S. 328, 335. The motives prompting him in so doing, therefore, are immaterial.

It has been held that if one maliciously interferes in a contract with two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer. Angle v. Chicago, etc., R. Co., 151 U. S. 1, 13; Leonard v. Abner-Drury Brew. Co., 25 App. D. C. 161, 175: 33 Wash. Law Rep. 211. If, however, the conditions were such that the aggrieved partner might have a cause of action against the plaintiffs, it would not be maintainable by him or his surety by way of set-off under the Code. Section 1563 thereof provides that: "Mutual debts and claims, under contract between the parties to a common law action, or between any of the several defendants and the plaintiff, . . . may be set off against each other by plea in bar, whether said debts or claims be of the same or a different nature or degree, and whether the claims be for liquidated debts or unliquidated damages for breach of contract; and if either debt be in the form of a penalty of a bond the exact sum to be set-off shall be stated in the plea."

Liberal as this section is in permitting set off, it embraces matters of contract only; and while unliquidated damages for a breach of the contract relating to the sale or warranty of the goods could be set off in an action by the vendors for their value, no damages for a mere tort, as is the case in this plea, can be so pleaded. Matters of mere tort are clearly not within the statute.

Assuming, but without intending to intimate an opinion, that the surety has a right of action for malicious interference in the matter of the partnership contract of his principal, whether that principal has or has not a similar right, it necessarily falls within the same rule of exclusion.

(2) On the other hand, regarding the plea as one of recoupment at common law, independent of any statute, it is likewise bad. The rule which permits the introduction of evidence in defense of actions upon contracts, in mitigation, diminution, or extinction of damages, has been liberally expounded by the courts of common law generally, without the sanction of statutes, through the natural desire to avoid circuity and multiplicity of actions. But no one of these, so far as we are advised, has ever permitted defenses by way of recoupment that were not immediately connected with, or had not arisen out of the same contract or suit on which the plaintiff relied to maintain his action. See Van Buren v. Digges, 11 How. 460, 475; Winder v. Caldwell, 14 How. 434, 443 (both cases arising in the District of Columbia); Dushane v. Benedict, 120 U. S. 630, and cases therein reviewed; R. R. Co. v. Car Co., 5 App. D. C. 524, 529: 23 Wash. Law Rep. 241; Tyler v. Messenger Co., 17 App. D. C. 85, 90: 28 Wash. Law Rep. 710.

(3) We have not deemed it important to consider the objection that one of the sureties could not maintain a separate cross action for the damage done to both by the same wrongful act, because the cosurety has filed a similar plea, and the practical result is the same as if they had joined in one.

The judgment must be affirmed with costs, and it is so ordered.

Affirmed.

Insurance—Change of Location—Transfer of Policy—Increased Premium.

In Cooper v. German-American Ins. Co. of New York, decided by the Supreme Court of Minnesota, in October, 1905 (104 N. W. 687), the following is the syllabus by the court:

"The duly authorized agent of a fire insurance company, having power to consent to the removal of the location of insured property and to transfer the policy, may by oral agreement consent to such removal and make such transfer, and if such agreement is made the policy does not become void, but continues in force. The fact that the rate of insurance is greater at the new location does not relieve the obligations of the company under the policy, provided the insured agrees and holds himself in readiness to pay the additional premium. The duty is upon the agent to ascertain what the increased rate is and make demand upon the insured therefor."

Digitized by Google

Court of Appeals of the District of Columbia.

JOHN W. CLARK, APPELLANT,

v.

LOUIS GERSTLEY ET AL.

PRINCIPAL AND SURETY; NOTICE OF DEFAULT OF PRINCIPAL; DISCHARGE OF SURETY BY EXTENSION OF TIME OF PAYMENT.

1. Failure by the obligees in a bond given by a partnership, conditioned for payment for merchandise purchased within four months from the date of each purchase, to notify the sureties of the fact of nonpayment, will not discharge the sureties, where the bond contains no requirement that such notice be given.
2. Mere delay in enforcing the obligation of the principals will not discharge the sureties.
3. A binding contract between the creditor and the principal debtor, without the surety's knowledge or consent, for the extension of the time of payment, will discharge the surety; but the extension of credit must not only be upon a valuable consideration, but for a fixed and definite time.
4. A plea that a surety on a bond has been discharged by an extension of the time of payment must show that the extension of payment has been agreed upon, in a way binding upon the principal, for a fixed and certain period; and a plea alleging merely that, without the surety's knowledge or consent, the plaintiff "extended the time of payment for a valuable consideration," is insufficient.

No. 1569. Decided November 8, 1905.

APPEAL by one of several defendants from a judgment of the Supreme Court of the District of Columbia, at law, No. 47,367, entered upon demurrer to defendant's pleas, he having elected to stand thereon. Affirmed.

Mr. M. J. Keane and *Mr. L. A. Bailey* for the appellant.

Mr. Simon Wolf, *Mr. Myer Cohen*, and *Mr. Eugene A. Jones* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, John W. Clark, was joined as one of the sureties of Monaghan and McGuire, in the general action upon the surety bond, as has been recited in the statement of the appealed case of McGuire v. Gerstley et al., No. 1550, ante, p. 754. His special pleas were not disposed of at the same time with those of his codefendants, but were postponed to April 7, 1905. On that date plaintiff's demurrers were sustained to each of his seven pleas, and judgment for $5,000 entered against him.

His appeal has been prosecuted separately, and was submitted immediately after the other.

The first six pleas are identical with those of his cosurety, William McGuire, and the demurrers thereto were properly sustained for the reasons that have been given in the opinion delivered in No. 1550, ante, p. 754.

The only questions for further consideration arise on the demurrer to the seventh plea, which was also sustained.

This plea reads as follows:

"7. And for a further plea this defendant says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory because he says: that by the terms of the said writing obligatory the said John F. Monaghan and J. Charles McGuire agreed to and with the plaintiffs and this defendant that they the said John F. Monaghan and J. Charles McGuire would pay to the plaintiffs, for the goods and merchandise purchased from the said plaintiffs in four months after the date of each respective purchase, yet, notwithstanding said agreement, the said John F. Monaghan, and J. Charles McGuire did not pay for the said goods in the said time agreed upon, nor did the plaintiffs require them to pay for the same, but on the contrary extended the time of payment for a valuable consideration, in which the said Monaghan and McGuire had to pay for the said goods and merchandise; that the said plaintiffs never notified this defendant of the failure of the said Monaghan and McGuire to pay for the said goods and merchandise as the same became due and payable under the terms of the said writing obligatory, neither did the plaintiffs notify this defendant that they extended the time of payment of said goods and merchandise beyond the said term of four months, as agreed upon in said writing obligatory; that by reason of the failure of the plaintiffs to notify this defendant that the said Monaghan and McGuire did not pay for the said goods and merchandise in four months from the date of each purchase, and by reason of the extension of credit given to the said Monaghan and McGuire without the knowledge or consent of this defendant, all of which facts became known to this defendant after the filing of this suit, this defendant was wholly relieved and discharged from all liability under and by virtue of said supposed writing obligatory."

1. So much of this plea as claims a discharge of the liability of the sureties for the want of notice by the plaintiffs of the failure of Monaghan and McGuire to make prompt payments upon the expiration of the credit, provided for each separate sale, is undoubtedly bad. The contract evidenced by the bond contains no requirement that such notice shall be given; and its omission, together with a mere delay in enforcing the obligation of the principals, worked no discharge of the sureties. Sprigg v. Bank, 12 Wheat, 201, 207; Lake v. Thomas, 84 Md. 608, 623.

2. The plea also undertakes to set up the defense of discharge by reason of an agreement with the principals extending the time of payment.

Undoubtedly, the contract of a surety is a strict one, and he has the right to stand upon the very terms of his undertaking. Any material change in the contract for which one has become surety, whether prejudicial to him or not, or the entry into a binding contract with his principal for the extension of the time of payment, without the surety's knowledge and consent, will work the discharge of his liability. Rees v. U. S., 9 Wall. 13, 21; Cross v. Allen, 141 U. S. 528, 537; Coughran v. Bigelow, 164 U. S. 301, 310; Walker v. Washington Title Ins. Co., 19 App. D. C. 575, 588: 30 Wash. Law Rep. 355.

The extension of credit must not only be upon a valuable consideration, but for a fixed and definite period. 1 Brandt, Suretyship & Guar., sec. 378; Hayes v. Wills, 34 Md. 512, 515; Jenkins v. Clarkson, 7 Ohio, 72, 75; Thompson v. Robinson, 34 Ark. 44, 52; Woolfolk v. Plant, 46 Ga. 422, 426; Morgan v. Thompson, 60 Iowa, 280, 283.

The nature of the unauthorized agreement

Digitized by Google

for an extension of the time of payment must be alleged in the defensive pleas with sufficient certainty to show that it comes within the rule above stated. It has been held that the simple averment that an extension has been made upon a valuable consideration, as in the foregoing plea, is but a statement of a legal conclusion, and is insufficient without the facts showing how the consideration arose. Winne v. Colorado Springs Co., 3 Colo. 155, 158; Palmer v. White, 65 N. J. L. 69, 70.

However this may be as a general rule applicable to all cases, it is well settled that the plea must at least show that the extension of payment has been agreed upon, in a way binding upon the principal, for a fixed and certain period. Menefee v. Clark, 35 Ind. 304, 306; Chrisman v. Perrine, 67 Ind. 586, 587; McCormick Harvesting Co., 9 N. D. 482, 484; Glickhouf v. Hirschhorn, 73 Ill. 579, 575; Prather v. Young, 67 Md. 480, 482.

Tested by these principles the plea is defective. All that is averred is, that without the defendant's knowledge and consent the plaintiffs "extended the time of payment for a valuable consideration."

For these reasons the court did not err in sustaining the demurrer to this plea also, and the judgment will be affirmed with costs.

Affirmed.

FRANK S. CAHILL ET AL., PLAINTIFFS IN ERROR,

v.

DISTRICT OF COLUMBIA.

POLICE REGULATIONS; STORAGE OF GASOLINE, ETC.; EVIDENCE.

1. Section 3 of article 3 of the Police Regulations of this District, prohibiting the storage or keeping for sale of inflammable oils, etc., without license, and prescribing the conditions under which such license shall be granted, held valid.
2. The evidence in a prosecution in the Police Court upon an information charging the plaintiffs in error, proprietors of an automobile garage, with having in store and keeping for sale gasoline without having first obtained a license held sufficient to support a finding that defendants were guilty, and the judgment affirmed.

No. 1595. Decided November 8, 1905.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. W. S. Duvall for the plaintiffs in error.

Mr. E. H. Thomas and *Mr. F. H. Stephens* for the defendant in error.

Mr. Justice McCOMAS delivered the opinion of the Court:

In the Police Court, Middleton and Cahill, plaintiffs in error, were convicted upon an information which charged them with having in store and keeping for sale gasoline without having first obtained a license.

This case comes to this court upon a writ of error to the Police Court to review its judgment.

At the trial the proof was that Middleton and Cahill maintained an automobile establishment at 1319 L street northwest, in Washington, where automobiles are received for storage; that on July 6, 1905, the fire marshal and the building inspector found on the premises a five-gallon can filled with gasoline and a like can nearly filled with gasoline; that nearby there was an underground tank of unknown location and dimensions; that pipes leading from the tank had a spigot located in the doorway of the garage, and the spigot, when turned on, yielded less than a gill of gasoline; that one of the plaintiffs in error admitted that the gasoline was drawn from the buried tank to refill the five-gallon cans mentioned, and from these cans the tanks of the automobiles stored in the building were filled; that the plaintiffs in error had no license to store gasoline in the underground tank, although they had a permit to conduct an automobile storage house, and had made application in due form for a permit to store gasoline in a fifty-gallon tank, which application had been approved by the fire marshal and the chief engineer of the District of Columbia, but no such permit had been issued.

It is contended that the third section of the second article of the Police Regulations of the District of Columbia, upon which the information in this case rests, is void, because by it the Commissioners of the District delegate to the inspector of buildings and to the chief engineer of the fire department powers delegated by Congress to the Commissioners, because it authorizes prohibition instead of regulation, because it omits rules to govern the inspector and chief engineer in recommending or refusing to recommend the issue of a license to store or keep for sale gasoline, and because it seeks to regulate the sale under authority from Congress to regulate the storage only.

The third section of the second article of the Police Regulations, the validity of which is denied, is as follows:

"Sec. 3. No person shall store or keep for sale in the District of Columbia any inflammable oil or fluid composed wholly or in part of petroleum or any of its products, or any other highly inflammable fluid, without an annual license therefor as provided in this article. Every person desiring such license shall make application therefor in writing to the fire marshal of the District of Columbia, stating the place, building, or part of building in which the applicant desires to store or keep such articles or any of them; and the said application shall be referred to the inspector of buildings and the chief engineer of the fire department, who shall examine the place or building described in the application, and transmit the said application, with their recommendation in the case in writing thereon, to the assessor of said District, who shall, if said officials so recommend, issue the license, unless otherwise ordered by the Commissioners."

In District of Columbia v. Weston, 23 App. D. C. 363, this court held that this section was a valid police regulation as made by the Commissioners of the District, saying, "It is not a delegation of their authority to commit to the expert agents named the duty of ascertaining and reporting information important to the exercise of their power to issue a license. . . . Applicants for license have no cause to complain that another agent is directed to issue the license if the former agents, upon inquiry into and report upon the necessary conditions, so recommend, and the Commissioners do not order otherwise." District of Columbia v.

Digitized by Google

Weston, 23 App. D. C. 366; 32 Wash. Law Rep. 284.

True, section 3 has been amended since by striking out "Commissioners of the District of Columbia" as the officials to whom application for license shall be addressed, and now provides that "every person desiring such license shall make application therefor in writing to the fire marshal of the District of Columbia," etc. This amendment does not affect the ruling in Weston's case, wherein it was also said "that in the execution of the powers conferred upon the Commissioners generally they may appoint executive agents, charged with the performance of ministerial duties under their general supervision and control, where there has been no express authorization thereof." District of Columbia v. Weston, 23 App. D. C. 366; United States ex rel. Kerr v. Ross, 5 App. D. C. 241.

It is further urged that while Congress gave power to the Commissioners to regulate the storage of gasoline, under the third section it is possible for either the Commissioners or their subordinates to prohibit the storage of gasoline. The purpose of the section is to regulate such storage by license, and it provides a mode of application for such license, a reference of such application to appropriate subordinates, who shall make recommendation thereon to another subordinate, who shall, upon a favorable recommendation, issue a license, unless otherwise ordered by the Commissioners.

The officers authorized to examine may report unfavorably upon the application, either because the building is of a character prohibited by other sections of article 2 of Police Regulations, or because the application states a desire to store a maximum quantity of gasoline, by the same regulations forbidden to be stored in the place or building described in the application for license, or the same subordinate may report favorably, and the assessor may desire to issue the license, but the Commissioners, because of certain reasonable restrictions in this article 2, may order otherwise.

If it were not possible to refuse license to those applicants who failed to fulfill reasonable requirements imposed for safety to life and property, it would not be possible to regulate by a license system the storing and keeping of gasoline.

Nor does section 3, when read in connection with other sections of article 2, fail to provide rules sufficient to guide and control the discretion of the fire marshal and the chief engineer, presumed to have knowledge of the proper methods for the safe storage of gasoline, in reporting upon applications for license.

There is no merit in the objection that Congress authorized the Commissioners to regulate the storage of gasoline only, but the third section regulates the sale of gasoline. Congress authorized the Commissioners to regulate the storage of all gasoline, whether stored for private use or public use, or stored or kept for sale to others. The storage for commercial use is the principal use of gasoline, and, therefore, this police regulation properly provides supervision of gasoline stored or kept for sale.

It is said that section 3 is so inconsistent with section 1 and section 5 as to be void for unreasonableness; that section 1 prohibits the storing of gasoline in any place except the interior of a building, while section 5 prohibits the storage of gasoline in any building whatever, and requires the tank containing it to be 6 feet outside and away from the nearest wall of any building, and therefore gasoline can not be stored at any place.

Now, section 1 prohibits only storage on the surface of any yard, avenue, street, etc., while section 5 permits storage underground outside of any buildings. This section permits storage in a tank of iron or steel to contain a maximum of fifty gallons of fluid that will flash at a temperature below 120 degrees. To limit the quantity of an explosive fluid to be stored to fifty gallons, and to require it to be stored outside of buildings in a tank buried underground is reasonable.

Sundry objections to revocation of license provided in section 5 are irrelevant here. The case now before this court is upon an information charging the plaintiffs in error with storing gasoline without a license.

Passing over several immaterial assignments of error, there remains the objection that there was not sufficient evidence to sustain a conviction upon the information in the court below.

From all the evidence it appears that the court below found that the plaintiffs in error were licensed keepers of a garage, where automobiles were cared for and filled and refilled with gasoline for pay, and that the plaintiffs in error filled the tanks of the automobiles from the five-gallon cans, and that these cans were in turn filled from the tank buried in adjacent ground wherein the gasoline had been stored. These and the other circumstances in evidence appear to have convinced the court, trying the case without a jury, that the gasoline in the plaintiffs' garage was stored and kept for sale to the persons whose automobiles were in the care of the plaintiffs in error, who did not have license to store and keep gasoline for such purpose.

The court below was justified in finding the plaintiff in error guilty. The judgment below will be affirmed with costs; and it is so ordered.

Master and Servant—Telegraph Operator Fellow Servant of Members of Train Crew—Negligence—Res Ipsa Loquitur—Rules—Meeting Orders.

In Northern Pacific Railway v. Dixon, decided by the United States Circuit Court of Appeals, eighth circuit, in August, 1905, 139 Fed. 737, the following is the syllabus by the court:

"A local telegraph operator, whose duty it is to gather and give information to the train dispatcher relative to the arrival of a train at his station, to enable the dispatcher to formulate orders for the movement of other trains, is a fellow servant of the train operatives in giving such information, so that the master is not liable to them for injuries caused by an erroneous order of the dispatcher, induced by false information given by the local operator.

"The doctrine *res ipsa loquitur* is inapplicable to negligence cases arising between master and servant, because the possible causes of accidents during service are many, for some of which the master, and for others of which the servant, is responsible, and the happening of an accident does not indicate to which class its cause be-

Digitized by Google

longs. The burden in such cases is always on him who alleges that the master was guilty of casual negligence to establish that fact. A finding that an accident happened and that the servant injured was not at fault does not sustain this burden, because the accident may have been unavoidable, or may have resulted from the negligence of fellow servants or from other causes for which the master is not liable.

"The rules of a railroad company that meeting orders must not be sent for delivery to trains of superior right at the points of execution if this can be avoided, and that there should be, if possible, at least one telegraph office between those at which opposing trains meet, do not constitute a peremptory prohibition and command, but except cases in which an ordinarily prudent man would deem it reasonably safe, in the light of the knowledge which the dispatcher has, to send a meeting order for delivery to a train of superior right at the point of execution, or to send meeting orders to opposing trains at points between which there is no telegraph station, and there is no other practical way to reasonably operate the railroad.

"The movement of freight trains by telegraphic orders, based on information relative to the location of the trains upon a railroad gathered and telegraphed by local operators or station agents to the train dispatcher, is a rational, careful, and approved method of operating a railroad. It is not a lack of ordinary care for a train dispatcher to believe, rely, and act upon such information, although it shows that an extra freight train has not reached a given station several hours after it was due to pass it."

Escrows—Deeds—Delivery After Grantor's Death.

In Keyes v. Meyers, decided by the Supreme Court of California in October, 1905 (82 Pac. 304), it was held that where the owner of land signed and acknowledged a deed and delivered it to a third person, with instructions to deliver it to the grantee on the grantor's death, but it was expressly agreed that, in case either the grantor or his wife repaid to the grantee certain advancements, they should be entitled to a surrender of the deed, the grantor did not part with all his dominion over the deed, and there was therefore no valid delivery thereof sufficient to pass title to the grantee.

Escrows—Failure to Deliver—Rights of Party Performing—Contracts for Conveyance—Execution—Breach—Damages.

In Naylor v. Stene, decided by the Supreme Court of Minnesota in October, 1905 (104 N. W. 685), the following is the syllabus by the court:

"A contract to sell land, deposited in escrow, takes effect according to its terms upon the performance of the agreed conditions by the grantee therein named, although not in fact physically delierved to him.

"A party who signs and delivers an instrument is bound by the obligations it contains, although it is not executed by all the parties for whose signatures it was prepared, where there is no testimony on his part of intention not to be bound thereby until it is signed by others, brought home to the obligee therein, no express agreement to such effect, and no loss of remedy, by way of indemnity or contribution, by failure of other parties to execute the instrument.

"Where the owner of an undivided half interest in land deposits a contract not signed by the owner of the other undivided half, to sell the whole land to a third person, in escrow, to be delivered to the grantee upon the payment of a certain sum, and thereafter acquires the title to the whole, the grantee named in that contract upon the payment of such sum becomes entitled to his rights thereunder, although the person holding it in escrow refuses to deliver it; and where such vendor has sold the premises to other persons, who were innocent purchasers for value, he is liable to the vendee in damages for breach of the contract."

Accident Insurance—Burden of Proving False Statements in Application.—In an action on an employer's indemnity policy, the burden is on defendant to show the falsity of any statements in the application. Goldman v. Fidelity & Deposit Co. of Maryland, Wis., 104 N. W. Rep. 80.

Accord and Satisfaction—Written Receipt.—When an agreement is fully executed to discharge a debt by the payment of a smaller sum, and such discharge is evidenced by a written receipt for the lesser sum in satisfaction of the greater, there is a valid and irrevocable discharge of the debt. Dreyfus & Co. v. Roberts (Ark.), 87 S. W. Rep. 641.

Bankruptcy—Bona Fide Purchaser of Note.—One who loaned money to the wife of a bankrupt to pay a mortgage on the bankrupt homestead, and received as security a note payable by the bankrupt to his wife, held a purchaser of the note in good faith for a present fair consideration, within Bankr. act, July 1, 1898, ch. 541, sec. 67e, 30 Stat. 564 (U. S. Comp. St. 1901, p. 3449).—Clarke v. Sherman, Iowa, 103 N. W. Rep. 982.

Carriers—Duty to Stop at Stations.—A passenger with means of ascertaining whether a train will deliver him at his destination held bound to avail himself of his opportunity to enter the right conveyance.—Texas & P. Ry. Co. v. Bell, Tex., 87 S. W. Rep. 730.

Master and Servant—Contract Releasing Railroad from Liability for Negligence.—Sleeping car porter's contract releasing railroads from liability for injuries to him held a complete defense to an action against a railroad company for injuries to him, without regard to whether the railroad's negligence was gross or slight. Chicago R. I. & P. Ry. Co. v. Hamler (Ill.), 74 N. E. Rep. 705.

Master and Servant—Contributory Negligence of Parent.—Where the death of an infant was caused by the negligence of his employer, the fact that the infant's father consented to the employment did not defeat his right to recover. Virginia Iron, Coal & Coke Co. v. Tomlinson (Va.), 51 S. E. Rep. 362.

Digitized by Google

Washington COLLEGE OF LAW

1328 NEW YORK AVENUE

REOPENS MONDAY, OCTOBER 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,
LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

Stockholders' Meeting (Annual).

OFFICE OF PUEBLO MINING COMPANY,
Rooms 710-711 Colorado Building,
WASHINGTON, D. C., November 29, 1905.

To the Stockholders of the Pueblo Mining Company.

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on **Tuesday, the 2d day of January, 1906, at 12 o'clock, noon,** for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on **Saturday, the 30th day of December, 1905, at 3 o'clock p. m., and will remain closed until Wednesday, the 3d day of January, 1906, at 10 o'clock a. m.**

[SEAL.] JNO. T. McCOY, Secretary.
48-3t

Legal Notices.

FIRST INSERTION.

Joseph Salomon, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Edward T. Farrar,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 21st day of December, 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of November, 1905. LUTHER H. POSEY, by Joseph Salomon, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,515. Admn. [Seal.] 48-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **George Washington,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of November, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of November, 1905. FRANK P. REESIDE, 1003 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,178. Administration. [Seal.] 48-3t

Legal Notices.

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.
Alexander B. Hagner et al. v. John H. Walter, Trustee, et al. No. 25,569. Eq. Doc. 57.

ORDER.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, beginning for same at the northeast corner of said lot 13, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 29th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, ——Brown, —— Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks during the month following the first publication of this order, and twice a month during the ensuing month, and in The Washington Post twice a month for two months, good cause therefor having been shown.

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. dec 1, 8, 15; jan 5, 12

Walter A. Johnston, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of James F. Peerce, Deceased.
No. 13,283.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of James F. Peerce and for letters testamentary, by Rebecca Delaney Hooe, as executrix, it is, this 28th day of November, A. D. 1905, ordered that **Thomas Hunter, Peerce Hunter, and Mrs. Lulu Hersperger,** heirs at law and next of kin of said James F. Peerce, and all others concerned, appear in said court on **Friday, the 29th day of December, 1905, at 10 o'clock A. M.,** and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star newspaper, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 48-3t

In the Supreme Court of the District of Columbia,
Hattie A. Mullican Byrnes et al., Complainants, v. Mary P. Brown et al., Defendants.
Equity No. 20,638. Docket 47.

Upon consideration of the report of A. A. Hoehling, jr., and Blair Lee, trustees, herein filed, wherein it appears that said trustees have received certain offers of purchase, at private sale, of lot Q, square 133, City of Washington, District of Columbia, among others, an offer of John T. Knott, of $1.07 per square foot; terms, one-third (⅓) cash, balance in one year, with interest at five per centum (5%) per annum, secured by deed of trust, it is, thereupon, this 29th day of November, A. D. 1905, ordered that sale of said lot to John T. Knott, at the above price, be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Post and in The Washington Law Reporter once a week for each of three successive weeks before said last-named day.

[Seal] By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 48-3t

Digitized by Google

Legal Notices.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to give notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the **estate of Lucippia A. Jones**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of November; A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of November, 1905. EDWIN D. JONES, 409 B st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,196. Administration. [Seal.] 48-3t

John Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia. Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956. Docket No. 49.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 27th day of November, A. D. 1905, ordered that said trustee be authorized to accept the offer of Sue F. Chapman to purchase at private sale for twelve hundred dollars, lot 7, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lot be ratified and confirmed unless cause to the contrary be shown on or before the **27th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 48-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Emma M. Cutting**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of November, 1905. HARRY O. CUTTING, 1818 4th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,300, Administration. [Seal.] 48-3t

P. H. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William H. Lee**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of November, 1905. MARY L. LEE, 1740 V st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,299. Administration. [Seal.] 48-3t

J. D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen W. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of November. 1905. DENNIS J. O'LEARY, 46 S st. N. W. JOHN D. COUGHLAN, 500 Fifth st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,291. Administration. [Seal.] 48-3t

Legal Notices.

SECOND INSERTION.

J. Paul Earnest, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Julia Fisher Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1905. JOSEPH A. McKELLIP, 1321 Park ave., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,284. Admn. [Seal.] 47-3t

George C. Gertman, Solicitor

In the Supreme Court of the District of Columbia. The Atkinson and Ballard Company, a Corporation, Complainant, v. The Unknown Heirs and Devisees of Benjamin Stoddert et al., Defendants.
Equity. No. 25,714. Doc. 57.

The object of this suit is to obtain a decree perfecting and establishing of record the complete title of the complainant to lots numbered twenty-three (23) and twenty-four (24) in Lloyd P. Pumphrey's subdivision of certain lots in square numbered sixty (60), in the city of Washington, in said District, as described in the bill of complaint. On motion of the complainant, by George C. Gertman, its solicitor, it is by the court, this 9th day of November, 1905, ordered that the defendants, the unknown heirs and devisees of Benjamin Stoddert; George Scott, executor, and in his own right; Jonathan Scholfield (of Issacker), executor, and in his own right; Mahlon Scholfield; Benjamin Waters, trustee, and in his own right; Sarah Talbot, Ann Dobey, John Balderson, Eliza Cowen, Lucretia Edmonston, John Woods, Rachael A. Levering, Joseph Scholfield, Hannah Scholfield, Sarah Scholfield, Lewis Scholfield, William Scholfield (of Mahlon); Elizabeth Hopkins, Rachael Hodge, Ann Scholfield, Thomas Scholfield, Andrew Scholfield, William Scholfield (of Issacker); Martha Stanton, James Stanton, Jane Anderson, Sarah Anderson, Mary Anderson, William Elliott, Joseph Elliott, Sarah Elliott, Margaret Elliott, Maria Elliott, Thomas Elliott, Mary Elliott, James Evans, (of Jonathan); John Evans (of Theophilus); George Evans, Cadwallader Evans, Oliver Evans (of Oliver); John Lampley, Elizabeth Lampley, Eliza W. Evans, Rachel Evans, Leah Evans, Thomas Evans, Evan Evans, Jesse Evans, Oliver Evans (of Joseph); Abner Evans, George Evans, Joseph Evans, Joseph Ball, William Brackin, Adeline Brackin, Elizabeth Brackin, Margaret Brackin, and Minnie Johnson, or if either or all of them be dead, then the unknown heirs and devisees of any or all of the above-named defendants, cause their appearance to be entered herein on or before the first rule day occurring forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order, otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once in November and three times weekly in December, 1905, prior to said return day, good cause having been shown by the bill and affidavit filed herein, to the satisfaction of the court, that further or longer publication is unnecessary. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] nov. 10; dec. 1, 8, 15

Jos. H. Stewart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term in Probate Court.
In re Estate of Milly Cook, Deceased.
No. 12,477.

This cause coming on to be heard upon the supplemental petition of the executor filed herein, and the same having been considered by the court, it is, this 22d day of November, 1905, by the court, ordered that said **Frank Rollins**, the alleged heir of **Milly Cook**, deceased, show cause on or before the **22d day of December, 1905**, why the last will and testament of said deceased should not be admitted to probate and record. Provided that this order be published once a week in The Washington Law Reporter and The Record, a weekly newspaper, published in Washington, D. C., for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills. [Seal] 47-3t

Digitized by Google

Legal Notices

Ernest L. Schmidt, Attorney
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Richard W. Ryan, Deceased.
No. 13,263. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edward B. Stumph, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to the unknown heirs at law and next of kin of Richard W. Ryan (deceased), and to all others concerned, to appear in said court on Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 47-3t

Benjamin S. Minor and T. Percy Myers, Solicitors
In the Supreme Court of the District of Columbia.
Tillotson E. Brown et al. v. Charles W. Brown et al.
In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 20 feet front of lot numbered 8 in square 417, improved by premises No. 1811 Eighth street N. W., to Tillotson E. Brown for the sum of $1,425, and sublot numbered 22 in square 417 to Tillotson E. Brown for the sum of $969, it is, this 23d day of November, A. D. 1905, by the court, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown, on or before the 22d day of December, 1905. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 47-3t

William D. Hoover, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Helen Morse Janin, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS & TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,500. Administration. [Seal.] 47-3t

Roach & Watkins, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re the Estate of Rose Bray, Deceased.
No. 13,275.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will of said deceased, and for letters testamentary on said estate, by Margaret Watkins, the executrix named in said will, it is ordered this 22d day of November, A. D. 1905, that notice be and is hereby given to James Boyle, Laurence Boyle, Rose Ellen Lunny, John Angier, William Bray, Richard Whitehead, Mary B. Clancy, Ann B. Smith, and to all others concerned, to appear in said court on Friday, the 22d day of December, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. [Seal] 47-3t

Legal Notices.

Chas. W. Clagett, Solicitor
In the Supreme Court of the District of Columbia.
Holding an Equity Court.
Arthur Browning et al, Complainants, v. Sue E. Browning et al. Equity No. 23,912.

Upon consideration of the petition of Charles W. Clagett and D. W. Baker, trustees, filed herein on the 23d day of November, A. D. 1905, stating that Percival M. Brown, trustee for Sue E. Browning, under the original decree filed in this cause on the 26th day of May, 1903, is desirous of purchasing lots sixty-eight (68), sixty-nine (69), and seventy (70) in Frank T. Browning's subdivision of lots in square numbered three hundred and sixty-seven (367) as said subdivision is recorded in the office of the surveyor for the District of Columbia, in book 15, page 134, and lot numbered fifty-four (54) in the heirs of John Davidson's subdivision of square numbered three hundred and sixty-seven (367), as per plat recorded in liber N. K., folios 102 and 103, of the office of the surveyor for the District of Columbia, for the sum of twenty-two thousand five hundred ($22,500.00) dollars cash, free and clear of all incumbrances, provided that one-third (1/3) of the net proceeds of sale is set aside to Percival M. Brown, as trustee for Sue E. Browning, as required by said original decree, dated the 26th day of May, 1903, passed in the above entitled cause, it is this 23d day of November, A. D. 1905, ordered, that Percival M. Brown, trustee for Sue E. Browning, be and he is hereby authorized and directed to purchase the real estate hereinabove described upon the terms above set out. It is further ordered: That Charles W. Clagett, D. W. Baker, and Percival M. Brown, trustees for sale herein, be and they are authorized and directed to accept said offer to purchase said real estate, unless cause to the contrary be shown on or before the 18th day of December, 1905. Provided that notice of said sale and this decree be published in The Washington Law Reporter once a week for three weeks prior to the said 18th day of December, 1905. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal.] 47-3t

Chas. W. Darr, Richard A. Curtin, Attorneys
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William Santry, also known as William Sauntry, Deceased.
No. 13,278. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Annie Collins, it is ordered this 20th day of November, A. D. 1905, that notice be and hereby is given to Ellen O'Brien, Jeremiah Driscoll, Patrick Santry, Michael Santry, Jeremiah Santry, Annie Santry, Annie Rawlette, Katie Carpenter, Margaret Carpenter, John Carpenter, Joseph Carpenter, May Carpenter, and Lily Carpenter, and to all others concerned, to appear in said court on Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal.] 47-3t

W. L. Pollard and M. N. Richardson, Solicitors
In the Supreme Court of the District of Columbia.
Soloman H. Jones et al. v. Andrew J. Miller et al.
No. 25,108. Equity Docket No. —.

The object of this suit is to remove cloud upon title lot 8, square 315, in city Washington, District of Columbia. On motion of the complainant, it is, this —— day of November, A. D. 1905, ordered that the defendants, Andrew J. Miller, Margaret V. Thompson, and Jessie McGlinchy, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and Evening Star once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 47-3t

Digitized by Google

Legal Notices.

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Ulrich Banf, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. AMELIA E. ZIMMERMAN, 628 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,290. Administration. [Seal.] 47-3t

Chas. W. Darr, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Catherine Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. PETER A. DRURY, 1432 Binney st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,266. Administration. [Seal.] 47-3t

Chas. Lipkins, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Charles J. B. Schutz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. JOHN C. SCHUTZ, 1450 Howard ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,274. Administration. [Seal.] 47-3t

Carlisle & Johnson, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin.
No. 10,117. Adm. Docket, 28.

On consideration of the petition of Georgia Anne O'Neill, executrix, it is by the court, this 22d day of November, A. D. 1905, ordered that the sale of lot twenty-one in Webb and Bradley, trustees' subdivision of square five hundred and twenty-eight (528) as per plat recorded in Liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Jeremiah Murphy, at and for the sum of $6,500, cash, subject to the payment to James F. Shea, of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed, unless cause to the contrary be shown, on or before the 23d day of December, 1905. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day.
[Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 47-3t

Arthur Peter, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frederick L. Collins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. KATHARINE V. COLLINS, No. 1633 34th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,259. Administration. [Seal.] 47-3t

Legal Notices.

Barnard & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Alonzo J. Eaton, Deceased.
No. 13,248. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, or for letters of administration on said estate, by Alonzo J. Eaton, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to Bernard L. Eaton, and to all others concerned, to appear in said court on Thursday, the 4th day of January, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before
[Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

Carlisle & Johnson, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Alexander Campbell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of November, 1905. JAS. J. CAMPBELL, Room 712, Carnegie Bldg., Pittsburg, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,277. Admn. [Seal.] 47-3t

THIRD INSERTION.

Wm. Herbert Smith, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Robert H. Montgomery, Deceased.
No. 13,217. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia A. Montgomery, it is ordered this 13th day of November, A. D. 1905, that notice be and hereby is given to Rachel Elliot, Susan Oakes, Anne Montgomery, and Sarah E. Rogers, and to all others concerned, to appear in said court on the 18th day of December, 1905, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before
[Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Carl Hugo Ziemann, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 26th day of December, 1905, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 13th day of November, 1905. LEON TOBRINER, AUGUST DAETZ, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,314. Administration. [Seal.] 46-3t

Digitized by Google

Legal Notices.

John B. Larner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Letts**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1905. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-3t

Lorenzo A. Bailey, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael Flaherty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of November, A.D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1905. BRIDGET FLAHERTY, 1300 Del. ave, S.W., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,280. Administration. [Seal.] 46-3t

Smith Thompson, Jr., Attorney
Supreme Court of the District of Columbia,
Holding Probate Court.
In re Estate of Susan Perry, Deceased.
No. 10,180. Administration.

It appearing to the court that John T. Wood, executor, has reported a bid of twenty-five dollars ($25.00) each for lots 1, 2, and 3, in block 7, section 3, in Burrville, District of Columbia, from William B. Johnson, it is this **16th day of November, 1905**, ordered that the sale of said lots to William B. Johnson at the above price be ratified and confirmed, unless cause to the contrary be shown on or before the **16th day of December, 1905**; provided a copy of this order be published in the Washington Law Reporter once a week for each of three [Seal] successive weeks before said last-named day. By the court: WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Harry G. Kimball, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c.t.a. on the estate of **Howard Markward**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of November, 1905. GEORGE H. MARKWARD, 609 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,268. Administration. [Seal.] 46-3t

Jno. Ridout, Attorney
In the Supreme Court of the District of Columbia,
Frank J. Dieudonne, Plaintiff, v. Liquid Carbonic Company, Defendant.
At Law, No. 47,944.

The object of this suit is to recover damages for breach of contract, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 27th day of October, 1905, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once [Seal] a week for three successive weeks before the return day of this order. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. 46-3t

Legal Notices.

B. F. Loucks, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Estate of Ephraim A. Greenough, Deceased.
No. 12,110.

Charles F. Nesbit, surviving executor of the last will and testament of Ephraim A. Greenough, deceased, having reported to the court the sale of sublot No. 16 in square No. 78:, improved by house No. 328 Massachusetts avenue n. e., in the city of Washington, District of Columbia, to Charles E. Rice for the sum of five thousand five hundred and forty-five dollars ($5,545), subject to a deed of trust for five thousand dollars and sixty-two dollars and fifty cents interest thereon, it is, this 10th day of November, 1905, ordered that said sale be ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the **11th day of December, 1905**. Provided that a copy of this order be published in the [Seal] Washington Law Reporter once a week for three successive weeks before said last-mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

Lancaster & Smith, Attorneys
Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William E. Frazier, Deceased.
No. 13,256. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by **Laura C. Frazier**, it is ordered this 15th day of November, A. D. 1905, that notice be and hereby is given to **John Frazier, Ephraim Frazier, and Harry Frazier**, and to all others concerned, to appear in said court on **Monday, the 18th day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

Leon Tobriner, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Charles C. Walter**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Friday, the 8th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of November, 1905. LEON TOBRINER, LIZZIE M. WALTER, Executors, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,228. Administration. [Seal.] 46-3t

Jno. Ridout, Attorney
In the Supreme Court of the District of Columbia.
Henry H. Meyer, Plaintiff v. The Standard Stone Manufacturing Company, Defendant.
At Law, No. 47,935.

The object of this suit is to recover an amount due to plaintiff from defendant on open account and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this **27th day of October, 1905**, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. This order to be published in The Washington Law Reporter once a week for three successive [Seal] weeks before the return day of this order. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk. 46-3t

Digitized by Google

Legal Notices.

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.
Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Alienees of George Mason and Others. No. 25,700. Equity Docket No 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and alienees of George Mason, of William Mason, of A. E. Grimes, and of Elizabeth Hooe, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in the Washington Times. By the court: THOS. H. ANDERSON, justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal.]

nov 3-10; dec 1-8; jan 5-12

William D. Hoover, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Aaron Stern, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Tuesday, the 5th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,394. Adm. [Seal.] 46-3t

Wilson & Barksdale, Attorneys
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Kate Ross, Deceased.
Probate No. 13244.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of Kate Ross and for letters testamentary, by Frank E. Gibson, as executor, it is this 10th day of November, 1905, ordered that **John W. Ross, Charles Riddle, Richard Anderson, William Anderson, Mary E. Denny, —— Smith, and the unknown heirs at law and next of kin of said Kate Ross**, and all others concerned, appear in said court on **Thursday, the 14th day of December, 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

[Seal]

46-3t

Robinson White, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles White, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before **the 10th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of November, 1905. JANE M. WHITE, care of Robinson White; CHAS. WHITE, Jr., 418 O st. S. W.; JENNIE W. FUGITT, 109 11th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13271. Administration. [Seal.] 46-3t

Legal Notices.

William G. Henderson, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary A. M. Smith, Deceased.
Administration. No. 12,145.

Henry Calver, executor, having reported to the court the sale of a certain piece of property belonging to the estate of the decedent, said piece of property being known as premises No. 1248 23d st. N. W., in the city of Washington, District of Columbia, and being lot D, in square 36, as designated in the ground plat or plan of the said city, together with improvements thereon, to James B. Wimer, for six hundred dollars ($600); it is, by this court, ordered and decreed that the sale be ratified and confirmed, unless cause to the contrary be shown on or before **the 11th day of December, 1905**; provided that a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

[Seal]

46-3t

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor and trustee having reported that he has sold premises No. 917 O street northwest, in the city of Washington, District of Columbia, being lot numbered nine (9) in Samuel Redfern's subdivision of square numbered three hundred and sixty-six (366), to the Deaconess Board of the District Woman's Home Missionary Society of the Baltimore Conference, a body corporate, of which said executor is one of the trustees, for sixty-five hundred ($6,500) dollars net, all cash, it is, by the court, this 15th day of November, A. D. 1905, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before **the 15th day of December, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

[Seal]

46-3t

Robert S. Hume and A. S. Worthington, Attorneys
In the Supreme Court of the District of Columbia,
Special Term for Probate Business.
In the Matter of the Estate of Ellen O'Brien, Deceased.
No. 10,958. Administration Doc. 29.

It appearing to the court that the notification as to trial of the issues in this case, relating to the validity of the paper writing dated the 10th day of June, A. D. 1902, purporting to be the last will and testament of Ellen O'Brien, deceased, has been returned as to John O'Brien, James V. O'Brien, Ann Fortune, and all unknown heirs at law, next of kin, alienees, and devisees of said Ellen O'Brien, deceased, "not to be found," it is thereupon by the court this 5th day of October, 1905, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the **17th day of January, A. D. 1906**, and that the substance of the issues and the date fixed for the trial, as shown in the margin of this order, be published for three months, once a month during the said period in The Washington Law Reporter, twice a week for not less than four weeks and twice a month for the remainder of the said period in The Washington Post. WENDELL P. STAFFORD, Justice.

MARGIN:

This is to give notice to **John O'Brien, James V. O'Brien, Ann Fortune**, and all unknown heirs at law, next of kin, alienees, and devisees of **Ellen O'Brien**, deceased, that, whereas a certain paper writing, bearing date of the 10th day of June, 1902, has been presented for probate and record in this court as the last will and testament of Ellen O'Brien, deceased, and the validity thereof is contested by certain of the parties in interest, issues have been framed and set for trial by jury in this court on the **17th day of January, A. D. 1906**, presenting the questions whether the said Ellen O'Brien was, at the time of the execution of said paper writing, of sound and disposing mind and capable of making a valid deed or contract; whether said paper writing, or the execution thereof, was procured from her by undue influence, fraud, and circumvention. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

[Seal]

oct. 6; nov. 3; dec. 1.

Digitized by Google

Legal Notices.

FOURTH INSERTION.

Ellwood O. Wagenhorst, Solicitor

In the Supreme Court of the District of Columbia.

Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedian, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, **Susan E. Hedian**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D, 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, **Susan E. Hedian**, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] nov. 10, 17, 24; dec. 1.

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.

Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants.

No. 25,588, Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 3½ inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3½ inches; thence south 183 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3½ inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and alienees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —— Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal]

nov 10-17-24; dec 1-9; jan 5-12

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid forat more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W

Legal Notices.

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia.

D. H. Roland Drury v. Minnie Fuller and Others.

No. 25,650 Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are **Minnie Fuller** (if living), and the unknown heirs, devisees and alienees of **Minnie Fuller** (if deceased), of **Andrew Schoilfield**, of **Robert Leckie**, of **Ruth Fuller**, of **Calhoun Clark**, and of **Sarah F. Fitzgerald**. On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal]

nov 3-10-17; dec 1-8; jan 5-12

SIXTH INSERTION.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,298.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet. thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Harlot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal]

sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 49

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - DECEMBER 8, 1905

CONTENTS.

Editorial 769
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
The Washington Times Company, appellant, v. Johanna Downey 770
Potomac Laundry Company, appellant, v. Elizabeth J. Miller, executrix of James E. Miller, deceased 773
Albert Dowling, appellant, v. Thomas W. Buckey. 774
Elmore E. Bernsdorff, appellant, v. Lucy Eva Bernsdorff 775
United States, appellant, v. Stephen U. G. Johnson, alias Garnet S. Johnson, appellee 776
Legal Notices 778

THIS WEEK'S OPINIONS BY THE COURT OF APPEALS.

Unincorporated Joint Stock Company—Withdrawal of Shareholder—Insolvency of Company.

In Bradford v. National Benefit Association, the decision was of special interest to depositors in the defunct Capital Savings Bank, an unincorporated joint stock company which heretofore carried on a savings bank business in this District. The question involved was whether the appellant had withdrawn as a shareholder in the bank before the appellee opened its account as a depositor in the bank, so as to relieve himself from liability as a partner in the enterprise. The trial court held that there was sufficient evidence to warrant the jury in finding that the appellant had not sufficiently followed up his attempt to withdraw as a shareholder, and that his conduct subsequently to the notice of his intention to withdraw was equivalent to an abandonment of such intention. The Court of Appeals affirms the judgment in an opinion by Mr. Justice McComas.

Wills; Bequest for Life; Right of Life Tenant to Principal.

In Payne et al. v. Robinson et al., the question was as to the construction of a bequest of $26,000, made by the will of Gen. William H. Payne to his son for life, and after his death to the son's wife. The court below directed the payment of the principal to the son, but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses this decree, and holds that the principal of the legacy should be retained and invested by the executors during the life of the son, to whom only the income should be paid.

Mandamus—Establishment of Post-Office.

In United States, ex rel. Romero et al. v. Cortelyou, Postmaster General, the appeal was from an order of the court below dismissing a petition for a writ of mandamus to compel the respondent to reestablish a post-office at the town of Las Vegas, New Mexico. It appeared that a post-office had been maintained there prior to March 31, 1903, when it was consolidated with that of East Las Vegas, the reason assigned being confusion in the delivery of mails caused by the similarity of names. By the terms of an act of Congress a post-office is required to be maintained at every county seat; and relying upon this statute the relators filed their petition for the writ. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the order appealed from, and holds that the petitioners were authorized to apply for the writ; that the duty imposed by the act of Congress was a plain ministerial duty, the exercise of which the courts could compel by mandamus.

Indian Tribes; Marriage of White Man with Indian Woman; Mandamus.

In U. S. ex rel. West v. Hitchcock, the relator claimed that by his marriage with an Indian woman he became "by adoption" a member of the Choctaw tribe, to which the woman belonged, and as such entitled to an allotment of land in Indian Territory. The Secretary of the Interior denied his application on the ground that the alleged adoption had never received his approval; and the relator sought by mandamus to compel the secretary to recognize the adoption. The trial court dismissed the petition, holding that it appeared from the answer of the respondent that the ruling involved the exercise of discretion on his part, which could not be controlled by mandamus; and its holding is affirmed by the Court of Appeals, in an opinion by Mr. Justice Duell.

Wrongful Levy of Execution on Property of Third Person; Pleading; Sufficiency of Declaration.

In Malnati et al. v. Thomas, the action was for damages alleged to have been occasioned by the wrongful levy of an execution upon certain bricks, the property of the plaintiff, which were sold by the marshal and applied in payment of the judgment. The question raised by the appeal was one of pleading, i. e. whether under the declaration the appellee Thomas was entitled to recover for the value of the bricks

Digitized by Google

so seized and sold. The trial court held that he was, and its ruling is affirmed, in an opinion by Mr. Justice McComas.

Criminal Law; Arson; Arrest of Judgment.

In Posey v. United States, the appellant was convicted under an indictment charging him, in three counts, with the statutory offense of arson, the charge being that he set fire to a house of which he was tenant, and to the furniture in the house owned by him and upon which he had a policy of insurance in the Potomac Fire Insurance Company, to the prejudice of the insurance company. The defendant contended that the counts of the indictment were inconsistent, and that the judgment should have been arrested for this reason. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment, holding that the first count at least was good and sufficient to support the conviction, and declining to consider the question of the sufficiency or inconsistency of the other counts.

Patent Appeals Decided.

Per Mr. Chief Justice Shepard: No. 307, In re application of Thurston, reversed; No. 296, French v. Holcomb, affirmed; No. 309, In re application of Hawley, affirmed; No. 315, Leeberger v. Russell, reversed; No. 319, Bauer v. Crone, affirmed; No. 325, Laas v. Scott, reversed.

Per Mr. Justice McComas: No. 316, Rolfe v. Hoffman, reversed; No. 305, In re application of Hill, reversed as to claims 6 and 7, and affirmed as to all other claims.

Per Mr. Justice Duell: In re application of Schraubstadter, affirmed.

THE terms of the present justices of the peace for this District will expire on December 31, 1905, and thereafter, under the provisions of the Code, the number will be six instead of ten as provided for by the Code prior to its amendment. The death of Gen. Halbert E. Paine reduced the number to nine. The following gentlemen, all of whom are now serving as justices of the peace, have been nominated by the President for the term beginning January 1, 1906: Charles S. Bundy, Lewis I. O'Neal, Samuel C. Mills, Luke C. Stryder, Thomas H. Callan, and Robert H. Terrell.

Master and Servant—Procuring Discharge of Nonunion Man.—A representative of a labor union can not lawfully procure the discharge from employment of a nonunion employee on the sole ground that he is not a member of the union. Berry v. Donovan (Mass.), 74 N. E. Rep. 603.

Court of Appeals of the District of Columbia.

THE WASHINGTON TIMES COMPANY, APPELLANT,

v.

JOHANNA DOWNEY.

LIBEL; DAMAGES; MENTAL SUFFERING; EVIDENCE; PECUNIARY CONDITION OF PLAINTIFF.

1. A newspaper article containing charges which tend to bring the party referred to therein into contempt, ridicule, and disgrace is actionable per se.
2. Mental suffering, shown to be the natural and direct result of defamatory words spoken or published in writing or print, constitutes an element of recoverable damages.
3. Evidence that, as the result of the publication of a libel, the plaintiff was not able to work as before at her occupation as a laundress and had to obtain help in her work because of her weakened condition, held to justify an instruction authorizing the jury, in estimating damages, to include such as the plaintiff may have sustained in her occupation and calling as a laundress.
4. In an action for a libel, testimony of the plaintiff to the effect that she had no parents living, but was dependent on her own exertions, held properly admitted, when offered not for the purpose of showing her poverty in order to ask increased damages on that account, but as relevant to the charge that impaired capacity to labor was an item of the actual damages resulting from the injury.

No. 1547. Decided November 8, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,732, entered upon the verdict of a jury in an action for libel. Affirmed.

Mr. W. J. Lambert and *Mr. D. W. Baker* for the appellant.

Mr. J. McD. Carrington and *Mr. Hayden Johnson* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee, as plaintiff below, began this action against the Washington Times Company to recover damages incurred through a libelous publication in the Evening Times, a newspaper printed and circulated by that company in the city of Washington on October 7, 1902.

The declaration sets out the defamatory and libelous article so published, which is entitled "Prayers Asked for Johanna's Removal. Queer Petition to Trinity Congregation Over Turmoil in a Laundry." Without reciting the article, which is lengthy, it is sufficient to say that it charges the said Johanna Downey with causing daily troubles for the past seventeen years in the Georgetown College laundry. Among other things, it charges that on one occasion she had been seen swinging out of a window in her night robe in a contest with another employee; that on another occasion, a few months before the publication, she had "cursed the boss like a sailor (meaning thereby that she had used abusive, profane, foul, and blasphemous language"); that she had thrown a cup of hot tea in the face of another employee. It also charged that she had been a favorite of the "boss," and has thereby been relieved of labor, and awarded better fare than others, etc. It is then added: "These are only a few items out of the daily occurrences for seventeen years." A note appended to the article asks that it be published

Digitized by Google

by all fair-minded newspapers throughout the country, that people may understand that the employees, after seventeen years of turmoil, are justified in requesting the prayers of the congregation of Trinity Church for the removal of the plaintiff from said laundry. It is averred that by reason of said publication, so wickedly and maliciously made, the plaintiff has been greatly injured in her good name, fame, and credit, and brought into public scandal, ridicule, and disgrace amongst her neighbors and other good citizens, who have been led to suspect and believe that she has been guilty of the conduct falsely imputed to her, and have refused to have acquaintance and social intercourse with her, and that "the plaintiff, by means of the committing of the said several grievances by the defendant, its servants, agents, and employees as aforesaid, became dejected in mind and enfeebled in body, so as to be prevented from attending to her ordinary business, and is, by means of the premises, otherwise greatly injured and damnified" in the sum of $10,000.

To this declaration the defendant pleaded the general issue.

On the trial the plaintiff was asked to state what effect the publication had produced upon her physically and mentally. Defendant objected, on the grounds that no damages could be recovered for effect on physical and mental conditions through publication of the libel, and that there was no allegation claiming damages of that character. The objection was overruled and exception reserved.

Plaintiff then testified that "she was not able to work as before; that she lost her memory; that that morning she could not remember a thing; that her health left her and she did not know what to do, only to lie down and cry; that Dr. Gwynne attended her once for shock, although she had never had a physician before; that she had to get somebody to help her with her work on account of her physical condition, and that she has had to take medicine every day before meals for nervousness, and did not take it before the publication." On cross-examination she said that she had been absent "about two weeks, during which time she was attending her aunt, who was sick; that nobody talked to her about the article; that her friends did not believe it; that nobody refused to have any acquaintance or discourse with her on account of the article, and nobody that knew her believed it." She was then permitted to testify that her parents were dead, and that she was dependent upon her own efforts. This was objected to as immaterial, but the objection was overruled, with exception reserved.

Dr. Gwynne testified that he was called to see plaintiff immediately after the publication of the article and "found her very nervous and excitable, suffering from shock, and appeared to be weak and trembling;" that her nerves had affected her physical condition, but she did not have nervous prostration. He only prescribed for her once, and at the time gave her bromide to quiet her nervous system, this being the usual remedy.

Other testimony tended to show good health of plaintiff before the publication, and a bad condition of health immediately thereafter, and that medicine had been taken to quiet her nerves, etc.

The only evidence offered by the defendant tended to show that the article had been left in defendant's office by a "New York Sun man," after it had been refused by its manager, and that the publication was a mistake. At plaintiff's request the court gave the following instruction to the jury:

"The jury are instructed that in estimating the damages to be awarded the plaintiff, they should render the verdict for such sum as they believe from the evidence will fully and fairly compensate the plaintiff for the injuries suffered by her by reason of the publication by the defendant company of the libel complained of; including injuries, if any, done thereby to the plaintiff in her occupation and calling as a laundress, and her mental suffering and physical injuries incident thereto arising out of the statements and accusations contained in the said publication, and the tendency thereof to bring the plaintiff into disgrace and disrepute among those of her calling and her friends and acquaintances and the community in general."

Defendant objected to this instruction on the following grounds:

1. That no recovery could be had in actions for libel on account of physical injuries and mental suffering. 2. That there was no claim for such injuries in the declaration. 3. That there was no evidence on which to base damages for injury done to the plaintiff in her occupation and calling as a laundress.

The jury returned a verdict for the plaintiff for $1,000 damages, and judgment was entered thereon, from which this appeal has been prosecuted.

The first assignment of error is founded on the exceptions taken to the admission of evidence tending to show mental suffering resulting from the publication complained of, as well as to the charge submitting the same as an element of damage to be considered by the jury.

1. The general proposition that mental suffering, shown to be the natural and direct result of defamatory words spoken or published in writing or print, constitutes an element of recoverable damages, seems to be supported by the great weight of authority. Markham v. Russell, 12 Allen, 573; Marble v. Chapin, 132 Mass. 225, 226; Rea v. Harrington, 55 Vt. 225, 226; McQueen v. Fulgham, 27 Tex. 463, 469; Turner v. Hearst, 115 Cal. 394, 399; 18 A. & E. Ency. L., p. 1083, and cases cited.

The leading case relied on by the appellant as maintaining the opposite view is that of Terwilliger v. Wands, 17 N. Y. 54, 59. That was an action for slanderous words spoken of a man, and it was held that he could not recover for injury to his health, and the mental anguish resulting therefrom. The spoken words, while tending to disgrace the plaintiff, did not charge him with the commission of any crime. We need not pause to discuss the distinction in this respect, which has generally been observed, between oral and written or printed words of defamation, or to consider whether some of the cases first cited may not be distinguished from Terwilliger v. Wands on that ground, because the point is unnecessary to the determination of the case at bar.

Digitized by Google

In a former case in this court, Mr. Chief Justice Alvey, who delivered the opinion, said: "Any and all publications, in writing or in print, imputing to another crime, or disgraceful, or fraudulent, or dishonest conduct, or which are injurious to the private character or credit of another, or which tend to render a party ridiculous or contemptible in the relations of private life, are libelous, and an action for damages is maintainable against the writer and publisher, unless the publication is embraced within that class of communications which are termed privileged communications, or unless the libeller can prove the truth of the libel." Gas Light Co. v. Lansden, 9 App. D. C. 508, 530: 24 Wash. Law Rep. 807; see, also, Bailey v. Holland, 7 App. D. C. 184, 189: 23 Wash. Law Rep. 813, and cases there cited.

In the last named case, it was said: "Where it does not appear that such statements or charges are true, or have been justifiably made, malice is presumed from their utterance. The malice consists in doing intentionally, and without justification, that which must work injury to another."

Whether any of the statements in the publication complained of amount to a charge of a commission of a criminal offense, though a trivial one, is immaterial, for, without doubt, they do contain charges tending to bring the plaintiff into contempt, ridicule, and disgrace. Consequently the publication is actionable per se. The plaintiff is, therefore, entitled to recover as general damages for injury to her feelings and the mental suffering which she endured as a natural result of the publication. Steamboat Co. v. Davis, 12 App. D. C. 306, 333: 26 Wash. Law Rep. 261. The charge in that case was substantially the same as that under consideration. See, also, Brooks v. Harrison, 91 N. Y. 83, 92, which limits the doctrine of the earlier case of Terwilliger v. Wands.

2. Another and distinct ground of exception to the charge is that it permitted the jury, in estimating the damages sustained by the plaintiff, to include such as she may have sustained "in her occupation and calling as a laundress."

It is true that the evidence did not show that the plaintiff had lost her employment, or that she had been deprived of her wages to any specified amount, but she did testify that she was not able to work as before, and that she had to obtain help in her work on account of her weakened condition. It was for the jury to say what weight should be given to this evidence in arriving at a fair and just estimate of the entire damage sustained.

3. The remaining assignment of error relates to the admission of the testimony of the plaintiff to the effect that she had no parents living and was dependent on her own exertions.

(1) Had this been an ordinary action for damages for injuries to person or property, the admission of the evidence over the defendant's objection would constitute reversible error. Such actions must be tried and verdicts found upon the facts constituting the cause of the action, uninfluenced by the social or pecuniary conditions of the respective parties. The peculiar character of actions for libel and slander, and the latitude of recovery permitted therein, have generally, however, been regarded as furnishing grounds for excepting them, to a certain extent, from the operation of this rule. The great weight of authority sustains the admissibility of such evidence, as regards the defendant, on the ground that the injurious effect of the defamatory words may reasonably depend largely upon the influence which the defendant may have in the community by reason of wealth and social position. Some authorities hold that evidence relating to the social and especially the pecuniary condition of the plaintiff, is inadmissible upon any ground, and these are strongly relied on by the appellant. Pool v. Devers, 30 Ala. 675; Reeves v. Winn, 97 N. C. 246.

On the other hand, a greater number hold that it is admissible to show the circumstances of the plaintiff, including not only her pecuniary condition, her family, and the like, but all the circumstances which give character to the slander and the injury occasioned thereby. Clement v. Maloney, 55 Mo. 352; Peltier v. Nict, 50 Ill. 511; Dixon v. Allen, 69 Cal. 528; Turner v. Hearst, 115 Cal. 394, 399; Larned v. Buffinton, 3 Mass. 546; Klumpf v. Dunn, 66 Pa. St. 141, 147; Barnes v. Campbell, 60 N. H. 27; Enos v. Enos, 135 N. Y. 609, 612; Press Pub. Co. v. McDonald, 63 Fed. (C. C. A.) 238, 243; Beelher v. Stenert, 2 Whart. 313; Enquirer Co. v. Johnston, 72 Fed. Rep. (C. C. A.) 443, 444. In several of the cases last cited, the plaintiff, to whom want of chastity had been imputed, was permitted to prove that she had young children. Discussing the admissibility of evidence of that fact, it was said by Showalter, C. J., in delivering the opinion of the Circuit Court of Appeals: "The children were part of her environment. Her relation to them was such as might make the hurt to herself more acute and permanent, such as might render her more sensitive to, and more helpless against, the wrong done. This court can not hold that the fact objected to was improperly brought to light, especially in view of the particular character of the publication."

The foregoing reasoning is equally applicable to the facts of this case. Mental suffering being a recognized element of the damages recoverable, it was not error to let the jury be put in a situation to consider whether that mental suffering might not be more poignant as well as certain in the case of a single woman without parents to sustain and comfort her when charged with the disgraceful conduct.

(2) It appears from the recitals of the bill of exceptions that the fact of plaintiff's dependence upon her own exertions was not offered for the purpose of showing poverty in order to ask increased damages on that account, but as relevant to the charge that impaired capacity to labor was an item of the actual damages resulting from the injury. Moreover, the reasonable apprehension of loss of employment might have contributed in some degree to the mental suffering. Now the unquestioned fact, recited in the libelous article itself, that the plaintiff had been employed in a laundry for seventeen years, was sufficient to show that she must have been dependent upon her own labor, without any direct evidence to that effect.

In connection with plaintiff's disclaimer of a purpose to prove poverty as an independent

Digitized by Google

fact for the consideration of the jury, it is to be observed that no evidence was offered to show that she had no property, or had accumulated no savings. Some of the cases heretofore cited go to the length of holding that the poverty, as well as the social condition of the plaintiff, may be proved, on the ground that the injurious consequences of the libel may readily be greater under some conditions than others. But, as we have seen, the admissibility of proof of poverty as an independent fact is not necessarily involved in this case. If it were we would not give it our approval.

There is nothing in the amount of the verdict to indicate that the jury were influenced by the poverty of the plaintiff to go beyond the limit of fair and reasonable damages enjoined by the court. If, after the express limitation of the purpose of the evidence, the defendant had any reason to apprehend that the jury might consider it for another, it ought to have asked a special instruction to that end; and this would, no doubt, have been granted.

For the reasons given, the judgment will be affirmed with costs. It is so ordered. Affirmed

---

THE POTOMAC LAUNDRY COMPANY, APPELLANT,

v.

ELIZABETH J. MILLER, EXECUTRIX OF JAMES E. MILLER, DECEASED.

SEVENTY-THIRD RULE; AFFIDAVIT OF DEFENSE; PLEADING.

1. An affidavit of defense held to state grounds that would, if true, defeat the claim of plaintiff in whole or in part; and a judgment under the 73d rule reversed.
2. A declaration in general assumpsit need not allege a promise to pay the amount sued for.

No. 1574. Decided November 20, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,122, entered under the 73d Rule, for insufficiency of the affidavit of defense. Reversed.

Mr. L. J. Mather and *Mr. C. T. Hendler* for the appellant.

Mr. W. C. Prentiss and *Mr. George Francis Williams* for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an appeal from a judgment rendered by the Supreme Court of the District of Columbia in a suit at law upon the money counts, with particulars of demand annexed, under the 73d rule of that court providing for a summary judgment.

Certain proceedings in this case, which terminated in a judgment, subsequently vacated, need not be considered. The discretion of the trial judge to grant motions and allow amendments disposes of many objections made to such proceedings in this case. For the rest, the appellee has not appealed and could not well do so. If the judgment vacated were a valid judgment in this cause, the judgment the appellee asks this court to affirm would be invalid.

This suit was instituted August 10, 1904, and at the same time the particulars of demand were filed containing many items, but no date except the head-line date, "Washington, March 17th, 1903." The items charged are classified as work done (1) "in boiler room;" (2) "materials used in boiler room," (3) and "work in old laundry building and addition."

The supporting affidavit avers that the total of the claim, $538.23, is due the plaintiff, whose testator, James E. Miller, in his lifetime, at the request of the Potomac Laundry Company, defendant below and appellant here, furnished work and provided workmen and did certain work in and about certain premises in Washington occupied and used by the defendant as a steam laundry.

The plea was the general issue. The affidavit of defense stated that the Potomac Laundry Company in May, 1902, carried on its business on premises owned by said James E. Miller, deceased, and paid $80 rental monthly. The company needed more land and an enlarged plant thereon, and Miller suggested that he owned the land east of the structure then used by the company, "and a contract was made between the said James E. Miller in his individual capacity and the said corporation, composed of Mooney, Ellsworth, and Miller, whereby it was definitely understood and agreed that the said Miller would make all the necessary improvements at his own cost and expense, for which he would ask, and which it was then and there agreed should be paid in the form of monthly rental, 8 per cent per annum on the total valuation of the ground and all the buildings erected thereon for the use and occupation of the said corporation, but nothing was then said about certain parts of said construction work—which might be deemed to be applicable only to the uses and for the purposes of the laundry—being paid for outright when completed for said laundry company; but it was distinctly understood at this meeting in May, and at all times subsequently when the matter of changes necessitating additional charges came up for discussion between them, that whatever additional cost was incurred by any change or alteration should be reimbursed to the said James E. Miller, as above indicated, viz: By paying him rental at the rate of 8 per cent per annum on the total cost of the said Miller's investment; and this was not only suggested by Mr. Miller, but was always agreed to by him, without demur or objection on his part, in the various conversations which took place between them—both on the 2d of May, 1902, when the contract was made, and at all subsequent conversations which took place between the date and the time of the occupancy of the new building in October of the same year; that after said contract was made, thereafter the said corporation's monthly rent to Miller was figured out on said basis, and the monthly amount of $140 agreed upon, which was embodied in a lease for five years, beginning January 1, 1903."

The affiant denies the justness of the claim now made and says "the defendant was not indebted to the Miller estate in the sum claimed."

Such is the material part of the affidavit of defense. The affidavit is vague and faulty. It fails to say distinctly that the debt claimed by

Digitized by Google

the declaration and in the particulars of demand is the same debt or sum of money or part of the same sum which Miller agreed on May 2, 1902, to expend in enlarging the building and plant, and the same the defendant agreed to pay by paying an increased monthly rental, which was thereafter duly paid by the defendant. It is possible that the plaintiff here sues the defendant for other work and materials furnished by Miller at a time prior or subsequent to October, 1902, when defendant says the contract of May 2, 1902, on the part of Miller, to enlarge the building and plant was performed and the new lease for five years, at the increased rental, is alleged to have been entered into.

Here the deficiency of the bill of particulars of the plaintiff below produces uncertainty. The only date thereon is March 17, 1903. Apparently the charges for the work done by masons and carpenters "in boiler room" and the various charges for "materials used in boiler room" and for "work in old laundry building and addition" were due and owing on the date mentioned. Apparently the "work on old laundry building and addition" claimed in the particulars of demand is work embraced within the contract between Miller and the defendant on May 2, 1902, which work has to be paid for by the increase in rental averred in the defendant's affidavit, and the same work for which plaintiff sued; for the affidavit filed with the plaintiff's particulars of demand claims payment for materials furnished and workmen provided, and work done in and about certain premises occupied by the defendant as a steam laundry, as set forth in said particular.

If this defense should be supported by evidence it would defeat the action. It is right, therefore, in this instance that this action should proceed to trial and judgment. Taking the two affidavits together we conclude that the defendant has stated such grounds of defense as would, if true, be sufficient to defeat the plaintiff's claim in whole or part.

This court said in Brown v. Bank, 18 App. D. C. 605: 29 Wash. Law Rep. 819: "The rule deprives a party of its ordinary right of trial by jury and should be strictly interpreted as regards the affidavit of plaintiff, and broadly and liberally construed as regards the counter affidavit of the defendant." Lawrence v. Hammond, 4th App. D. C. 467: 22 Wash. Law Rep. 749. Gleason v. Hocke, 5th App. D. C. 1, 5: 22 Wash. Law Rep. 809.

"If there be nothing in the general statement of the facts of the defense to indicate or suggest evasion, or studied uncertainty of allegation or denial in matters susceptible of clear and precise statement; and if it appear by any reasonable or fair construction that the facts so generally stated would constitute a defense to the plaintiff, in whole or in part, the constitutional right of trial by jury must be accorded." St. Clair v. Conlon, 12th App. D. C. 161, 163: 26 Wash. Law Rep. 165; Magruder v. Schley, 17 App. D. C. 227, 231: 28 Wash. Law Rep. 870.

These settled propositions concerning the 73d rule apply to the case before us, and the judgment appealed from must be reversed.

As the case will be remanded for trial the appellant's exception to the declaration as insufficient, because it does not allege a promise to pay, must be disposed of. The declaration in this case is the common money counts, and these are in the form required by the 112th rule of the court below, and, of course, in the usual and approved form.

The appellant's argument confounds special assumpsit and general assumpsit. No promise is alleged in indebitatus assumpsit, or general assumpsit, which rests only on a *legal* liability springing out of a consideration received; and the difficulty clears away if it is kept in mind that in no case in which general assumpsit is brought does the plaintiff ground his claim upon a special agreement or promise. He proceeds exclusively upon the implied legal engagement or obligation of the defendant to pay the value of the services ordered or received by him. 2d Smith's L. C. 63, 64. 7th Amer. ed., H. & W.'s notes.

The judgment must be reversed with costs. This cause is remanded for further proceedings not inconsistent with this opinion, and it is so ordered.

Reversed.

ALBERT DOWLING, APPELLANT,

v.

THOMAS W. BUCKEY.

APPEALS; CITATION; FAILURE TO SERVE; WAIVER.

The failure of the appellant to have a citation issued and served upon the appellee is waived by the latter where, upon notice given under the rules of the appellant's designation of the parts of the record to be included in the transcript, he expressly consents thereto, and the transcript is thereupon prepared and filed with the clerk of this court.

No. 1622. Decided November 24, 1905.

MOTION to dismiss an appeal for failure to issue or serve citation. Denied.

Mr. A. A. Lipscomb and *Mr. W. M. Ellison* for the appellant.

Mr. Joseph D. Wright and *Mr. W. R. Andrews* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee has moved to dismiss this appeal because no citation was issued and served as required by section 5, Rule 10, of this court.

It appears that citation was issued in due time after entry of the appeal in the court below, but had been returned unserved because of failure to pay the fee required therefor. If this were all that is shown by the record, the appeal would have to be dismissed. Chester v. Morgan, 11 App. D. C. 435, 439: 25 Wash. Law Rep. 767.

The appellee, was, however, informed of the prosecution of the appeal by notice given, under the rules, of appellant's designation of the parts of the record to be included in the transcript. To this designation he expressly consented, and the transcript prepared in accordance therewith was then obtained and filed with the clerk of this court. By this action the failure to serve the citation was waived, and the motion will, therefore, be denied.

Denied.

Digitized by Google

Court of Appeals of the District of Columbia.

ELMORE E. BERNSDORFF, APPELLANT,

v.

LUCY EVA BERNSDORFF.

APPEALS; DIVORCE; ALLOWANCE FOR COUNSEL FEES, ETC., PENDING APPEAL, DENIED,

An application for an order requiring the husband, appellant in a divorce proceeding, to pay to the appellee a sum for counsel fees and expenses, pending the appeal, denied, for the reason that there was no proof that appellee was herself unable to advance the money necessary for the purpose, without prejudice to its renewal on final hearing.

No. 1578. Decided November 15, 1905.

MOTION for counsel fees and expenses of printing brief. Denied.

Mr. Charles W. Stetson, for the appellee, for the motion.

Mr. C. F. Carusi, for the appellant, opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Pending this appeal the appellee prays for an order requiring the appellant to pay over a sum sufficient for her counsel fees and for printing a brief on her behalf.

As a reason for presenting the motion in this court, it is stated that two motions to the same effect were made in the trial court, but overruled without prejudice, because that court was of the opinion that the application should be made to this court. The power of the trial court to make an order for such a purpose in a divorce proceeding has been heretofore affirmed. Sparks v. Sparks, 25 App. D. C. 356. And this power, we think, continues after the taking of the appeal until, at least, the transcript shall have been lodged in the office of the clerk of this court under the rules governing in such cases. In a recent case in which it was intimated, though not expressly decided, that it is within the power of this court to grant such a motion, it was said that the better practice would be to make it in the trial court before the filing of the transcript. Morgan v. Morgan, 25 App. D. C. 389: 33 Wash. Law Rep. 409. For this there is ordinarily ample time between the entry of the notice of appeal and its completion by the filing of the transcript. The reason for the suggested practice is that the trial court, having a knowledge of all the facts, and having rendered its decree upon their consideration, is in a better position to exercise the necessary discretion than the appellate court, which may be called upon to act in advance of the hearing. The appellee, however, is not at fault in this respect, because she did make her application first to the trial court.

Assuming that this court has the power to entertain the pending application, we are constrained to deny it, for the present at least, because it is supported by no proof whatever that the applicant is unable to advance the necessary money for the purposes set forth therein.

The question, then, whether any allowance shall be made to the appellee for the expenses incurred in representing her interests will be considered and determined on the hearing of the appeal. The motion will, therefore, be now denied, without prejudice to its renewal and determination on a final hearing. It is so ordered.

JOHN HENRY LANE, APPELLANT,

v.

EMMA EUDORA LANE.

APPEALS; DIVORCE; ALLOWANCE FOR COUNSEL FEES, ETC., PENDING APPEAL.

1. This court has power, pending an appeal in a divorce proceeding, to require payment by the husband to the wife of a sum for counsel fees and expenses.
2. Such power will be exercised, however, only when the application is supported by proof that the applicant is in a destitute or needy condition, and that good reason exists why the relief could not be obtained in the trial court.
3. These reasons being shown to exist in the present case, the application granted.

No. 1614. Decided November 20, 1905.

MOTION for allowance of attorneys' fees and expenses pending appeal. Granted.

Mr. John E. McNally, for the appellee, for the motion.

Mr. Thos. J. Mackey, for the appellant, opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Pending the appeal in this case, the appellee moves for an order making an allowance of a sum reasonably sufficient to pay her attorneys' fees and expenses therein, to be paid by the appellant.

The facts presented differentiate this motion from others for the same purpose that have heretofore been denied.

It appears that on December 2, 1904, the appellee filed a bill against the appellant in the Supreme Court of the District, praying a legal separation. On January 27, she filed an application therein, supported by affidavits, for an order granting her alimony pendente lite and counsel fees. January 31 an order was passed allowing her twenty-five dollars per month as alimony. The appellant paid the same for three months and then made default.

On August 5, appellee filed a petition, alleging the non-payment of the said allowance for three months, and asking a rule on the appellant to show cause why he should not be adjudged in contempt for disobedience of the said order. Appellant, appearing, was adjudged to be in contempt and ordered into the custody of the marshal until he should pay said arrears of alimony, amounting to seventy-five dollars. From that order this appeal has been prosecuted.

After the transcript had been filed in this court, the appellee moved in the court below for an order to compel the payment of a sum of money to enable her to pay counsel fees on her appeal. This motion was denied for the want of jurisdiction. The motion now made is supported by affidavit showing that the appellee is in destitute circumstances, and that the appellant is in receipt of a salary of $100 per month as a Government clerk. The appellant admits the receipt of said salary, but says that

Digitized by Google

it "is barely sufficient to meet the interest upon his debts and furnish him a decent support." He further alleges that he owns a lot in the city of Washington, upon which he owes purchase money in the sum of $2,100. It does not appear what is the value of the same. He also alleges that he owes a small sum for taxes, $100 on a life insurance loan, $46 secured by deed of trust on his furniture (value not stated), besides certain other debts amounting to about $370. He also denies that appellee is in destitute circumstances, but alleges that she is maintained in comfort through her services as housekeeper for another person.

We have, in former cases, intimated that this court has the power to entertain a motion of this kind, pending an appeal in a divorce proceeding, though it was not then necessary to actually decide the question. Morgan v. Morgan, 25 App. D. C. 389: 33 Wash. Law Rep. 409; Bernsdorff v. Bernsdorff (present term). Now that its determination is necessary, we have no doubt that the power to make such an order is incident to the appellate jurisdiction vested in this court. Prim v. Prim, 36 Fla. 676, 684; Clarkson v. Clarkson, 20 Mo. App. 94; Chaffee v. Chaffee, 14 Mich. 462; Disbrough v. Disbrough, 51 N. J. Eq. 306; Vanduzer v. Vanduzer, 70 Iowa, 614, 621; Lake v. Lake, 17 Nev. 230, 238; Krause v. Krause, 23 Wis. 354, 356; Wagner v. Wagner, 36 Minn. 239, 243.

This power is one, however, that will not be exercised unless the application for the order is supported by proofs tending to show that the applicant is in a destitute or needy condition, and that there exists a good reason why the relief could not be obtained in the trial court. Those reasons existing in the present case, the motion will be granted, and an order will be entered directing the appellant, within ten days, to pay to the clerk of this court, for delivery to the appellee, the sum of twenty-five dollars, to enable her to be represented by counsel on the hearing, and that in case of his default his appeal shall be dismissed with costs.

It is so ordered.

UNITED STATES, APPELLANT,
v.
STEPHEN U. G. JOHNSON, ALIAS GARNET S. JOHNSON, APPELLEE.

CRIMINAL PROCEDURE; INDICTMENT; CERTAINTY.

1. Particularity and certainty are required in indictments, and the charge must be made directly, and not inferentially or by way of recital.
2. An indictment for a violation of Sec. 5479 R. S. held insufficient, and an order sustaining a motion in arrest of judgment affirmed.

No. 1542. Decided November 8, 1905.

APPEAL by United States from an order of the Supreme Court of the District of Columbia, holding the Criminal Court, Criminal, No. 24,446, sustaining a motion in arrest of judgment. Affirmed.

Mr. J. S. Easby-Smith for the United States.

Mr. D. W. Baker, *Mr. M. F. Mangan*, and *Mr. F. J. Hogan* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken by the United States from an order of the Supreme Court of the District of Columbia sustaining a motion to arrest a judgment on a verdict rendered in the above-entitled cause.

The record discloses that the appellee Johnson was indicted and tried for an alleged violation of section 5479 of the Revised Statutes of the United States. The indictment contained two counts, the first of which is alone to be considered, for the reason that a verdict of not guilty was found as to the first count.

A demurrer to the indictment was filed before issue joined and overruled.

In passing, it may be noted that at the same term of the court at which the indictment now before us was found, another indictment against Johnson was found for perjury in the execution of the affidavit, the forgery of which is the basis for the indictment now under examination. The trial of that indictment resulted in Johnson's conviction, and upon appeal that conviction has been affirmed at the present term of this court (Johnson v. United States). It was admitted by counsel for appellant, upon the hearing of this appeal, that an affirmance of that judgment would preclude an additional sentence, should the court sustain the appeal herein.

An examination of the first count of the indictment discloses that it sets forth that Johnson was desirous of obtaining employment as a postal letter carrier in the Washington City Post Office Department and that to obtain such employment it was necessary, under the Civil Service Act of January 16, 1883, for him to make application in writing to the United States Civil Service Commission and be by said commission examined as to his qualifications in the premises; that it was required by the rules promulgated by the commission, pursuant to law, that Johnson, in the manner prescribed by the commission, and upon a blank form furnished, answer certain questions touching his qualifications; that the application as completed should be sworn to before a duly-qualified officer, whose certificate should be attached thereto, and then by Johnson forwarded and presented to the commission; that Johnson, having filled in the answers to the questions set forth on the blank form, executed the application in the manner prescribed, "and that the material questions and answers aforesaid had reference, among other things, to whether said Johnson had ever been employed in the Government civil service of the said United States, and to whether, if said Johnson had been employed in said service, said Johnson had been discharged from said service, or had resigned from said service."

The indictment further charges that Johnson, well knowing that he had been employed in said Government civil service and had been discharged from said civil service, did "unlawfully and knowingly falsely make and forge" the said application, "and did then and there present the same at the office of said United States Civil Service Commission . . . for the purpose of deceiving said commission . . . and for the purpose of defrauding the said United States." The application referred to is set out in full. An inspection discloses

Digitized by Google

that it contains twenty questions, several of them subdivided, to all of which answers were made. The following were the ground upon which the motion for arrest of judgment was based:

"1. That the first count in said indictment on which said defendant was convicted does not charge an offense under the laws of the United States.

"2. That said count attempts to charge defendant with falsely making and forging a certain application, but that said indictment fails to state wherein said application was falsely made and forged.

"3. That said application alleged to have been falsely made and forged is not a declaration or statement required by any law of the United States to be made, and therefore, is not a declaration or statement within section 5479 of the Revised Statutes of the United States.

"4. That there is no law or valid rule promulgated by the Civil Service Commission which required the certain facts set up in said indictment to be a part and parcel of said application."

It will be unnecessary to consider any of the grounds save the second, which was the one mainly discussed by counsel for the respective parties. The third and fourth grounds were not well taken, and the same objections were held bad in Johnson v. United States, decided at the present term of this court. If the first ground is intended to assert that forgery, when properly alleged, of an application for examination under the civil service law and valid rules is not an offense covered by section 5479 of the Revised Statutes, the objection is not well taken under the decisions in analogous cases. United States v. Curley, 130 F. R. 1; Johnson v. United States, supra. If, on the other hand, it means that no offense is charged because not properly set forth, then it is covered by the second ground upon which the motion was based.

That particularity and certainty are required in indictments is the well-settled rule of law applicable to the subject. "The indictment must be free from all ambiguity." Evans v. United States, 153 U. S. 584. Equally true is it that the charge must be made directly, and not inferentially, or by way of recital. United States v. Hess, 124 U. S. 483; Tyner v. United States, 23 App. D. C. 324.

Measured by these standards, we think the indictment was fatally defective. We have seen that the appellee was called upon to answer many questions, and if the offense alleged is considered to lie in a false answer to one or more of these questions the indictment, if good as to one false answer, is good as to all false answers. The mere statement of the indictment that one answer was false, which statement is a mere recital, does not free the indictment from ambiguity. That the forgery consisted in such alleged false answer is not directly charged, and at the best can only be spelled out. It is a mere inference. Reading the indictment in connection with the statute, one would as naturally infer that the name of the notary had been forged. Counsel for appellant admits that it is only by implication that the indictment charges that the recited answer was in fact false, and adds that "although the charge is indirect and inferential," the effect is sufficiently clear as to be unmistakable to the ordinary intelligence. We think that it would be an unsafe rule to lay down that an indictment is good or bad according to the degree of the intelligence of the indicted person or his attorney.

By reason of our decision sustaining the judgment in the other case against Johnson, the question to be here determined is of little or no importance to the parties to this case, and further discussion becomes unnecessary.

In conclusion, it may be said that the defect in the indictment was not cured by the verdict, for the reason that the demurrer to this count was overruled, which takes the case outside section 1025 of the Revised Statutes. Moore v. United States, 160 U. S. 268. It follows that there was no error by the court below in granting the motion in arrest of judgment, and therefore its decision should be affirmed. And it is so ordered.

Life Insurance—Assignment of Policy.—The assignor of a life policy was estopped to deny that the assignment was not valid because not indorsed on policy, as required by the terms thereof. Connecticut Mut. Life Ins. Co. v. Tucker (R. I.), 61 Atl. Rep. 142.

Life Insurance — Effect of Incontestable Clause.—Insurer held precluded by an incontestable clause to defend a liability on the policy, after it had been in force two years, on the ground of misrepresentation and fraud. Williams v. St. Louis Life Ins. Co. (Mo.), 87 S. W. Rep. 499.

Master and Servant—Contributory Negligence Question for Jury.—In an action by a coal mine employee for injuries sustained while attempting to leave the elevator cage at the bottom of the mine, the question of his contributory negligence held for the jury. Illinois Third Vein Coal Co. v. Cioni (Ill.), 74 N. E. Rep. 751.

Master and Servant—Liability for Tort of Servant.—Vendor of a stove, sending his servants to set it up in the vendee's house, held responsible for their negligence. — Crandall v. Boutell, Minn., 103 N. W. Rep. 890.

Master and Servant—Safe Place to Work.—On the issue of whether the place in which a servant was working was reasonably safe, evidence as to conditions of similar places during past years held properly excluded.—Mueller v. Northwestern Iron Co., Wis., 104 N. W. Rep. 67.

Bills and Notes—Alteration.—Where, after a note was indorsed and delivered by the indorser to the maker, the latter altered it and delivered it to the payee, who took it without notice of the alteration, the indorser was liable to the payee, under Rev. Laws, ch. 73, secs. 69, 141. Thorpe v. White (Mass.), 74 N. E. Rep. 592.

Digitized by Google

Master and Servant—Duty to keep Car-Step in Repair.—It was the duty of a railroad company to keep a step on a car used by servants in suitable repair, and to see that it was of sufficient strength. Smith v. Thomson-Houston Electric Co. (Mass.), 74 N. E. Rep. 664.

In Barnes v. Long Island R. Co., 93 N. Y. Supp. 616, the New York Supreme Court (trial term, Owens county) decides that the clause in a contract of through shipment limiting the carrier's common-law liability, being void in the State where the contract was made and from which the shipment was made, is void in the State to which the shipment was made, though the loss occurred there and though under the law of that State the liability of a carrier for negligence might be limited.

A certain judge in the years when he ornamented a circuit bench in South Carolina, is said to have bonded considerable of the mountain dew. One day after dinner he had evident difficulty in concentrating attention upon an argument by counsel, who at length in desperation suggested that the case ought to be heard by the full court.

"I think you would have difficulty in finding a fuller court," beamed the justice.

Washington COLLEGE OF LAW

1328 New York Avenue

REOPENS MONDAY, OCTOBER 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,
LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth st. N. W., on Monday, January 8, 1906, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 M. to 1 P. M.

H. Randall Webb, *Secretary.*

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Stockholders' Meeting (Annual).

Office of Pueblo Mining Company,
Rooms 710-711 Colorado Building,
Washington, D. C., November 29, 1905.

To the Stockholders of the Pueblo Mining Company.

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on **Tuesday, the 2d day of January, 1906, at 12 o'clock, noon,** for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on **Saturday, the 30th day of December, 1905, at 3 o'clock p. m., and will remain closed until Wednesday, the 3d day of January, 1906, at 10 o'clock a. m.**

[SEAL.] JNO. T. McCOY, Secretary.
48-3t

Legal Notices.

FIRST INSERTION.

Jos. A. Burkart, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Frank B. Marlow,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. JOS. A. BURKART, 516 Corcoran Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,309. Administration. [Seal.] 49-3t

Gordon & Gordon, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Celia E. V. Beall,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. LIZZIE B. GLADMON, care of Gordon & Gordon, 330 4½ st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,871. Admn. [Seal.] 49-3t

Lambert & Baker, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Daniel F. Shea,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. ANNIE E. SHEA, 1919 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,276. Administration. [Seal.] 49-3t

Filed December 7, 1905. J. R. Young, Clerk.
L. P. Harlow, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Violet Simpson, Complainant, v. Ollie Simpson, Ella Giesling, Defendants. Eq. No. 25,836. Doc. 57.

The object of this suit is to obtain an absolute divorce. On motion of the complainant it is this 7th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice.

[Seal]

A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Dec. 8-15-22

Digitized by Google

Legal Notices.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Carl A. Lindquist**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 27th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of December, 1905. EDWIN B. HAY. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,457. Administration. [Seal.] 49-3t

F. R. Keys, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
John H. Robinson v. Ella Robinson and George Mahoney, Co-respondent. Equity, No. 25,698.

On motion of plaintiff, by F. R. Keys, his solicitor, it is ordered that the defendant, **Ella Robinson**, and the co-respondent, **George Mahoney**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. Done this 3d day of November, 1905. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 49-3t [Seal]

Berry & Minor and Hugh H. Rowland, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Van Ness Boynton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. HELEN AUGUSTA BOYNTON, care of Berry and Minor, 705 Colorado Bldg., Washington, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,008. Administration. [Seal.] 49-3t

John S. Alleman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James P. Wilson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. EMMA FLORENCE WILSON, 811 North Carolina ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,320. Administration. [Seal.] 49-3t

W. Russell Graham, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph S. Tucker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. DE WITT CLINTON L. TUCKER, 1320 K St., S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,212. Administration. [Seal.] 49-3t

Legal Notices.

W. H. Robeson, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of James Smith, Deceased.
No. 11,789.
ORDER.

In the Supreme Court of the District of Columbia, holding a Probate Court: This cause coming on to be heard upon the petition of the administrator, and it appearing to the court that the administrator has appointed the **29th day of January, 1906**, for a meeting of persons entitled to distributive shares or legacies or a residue out of the estate of **James Smith**, the said action of the administrator in fixing said date is on this, the 1st day of December, 1905, hereby approved. And it further appearing to the court that all the heirs at law, next of kin, and distributees of the said James Smith, deceased, are non-residents of the District of Columbia, and so far as known to the said Samuel A. Putman, administrator, are named as follows: **Walter Harrington, Henry Harrington, Frank Harrington, John A. Smith, Martha Ann David, nee Woodworth, and Charles Woodworth.** And it further appearing to the court that the said Martha Ann David is a person of unsound mind and without committee or guardian, William H. Woodwell is hereby appointed a guardian ad litem for the purpose of the preservation of her interests in this proceeding, if any she have. It is further ordered that a copy of this order be mailed to said parties by said administrator by registered letter; and also that a copy of this order be published in The Washington Times and The Washington Law Reporter in each week for four successive weeks, the last publication to be at least twenty days prior to said 29th day of January, 1906. WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 49-4t [Seal]

Edward A. Newman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aretta G. Condict**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. FRANK G. CARPENTER, 1318 Vermont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,886. Administration. [Seal.] 49-3t

George C. Gertman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **August C. Romacker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. GEORGE P. ZURHORST, 301 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,318. Administration. [Seal.] 49-3t

Campbell Carrington, Solicitor
In the Supreme Court of the District of Columbia.
Mabel Huff, Complainant, v. Warren Rutledge Huff, Defendant, Clara De Marr, Co-respondent.
No. 25,658. Equity Docket No. 57.

The object of this suit is to obtain an absolute divorce upon the grounds of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this —— day of December, A. D. 1905, ordered that the defendant, **Warren Rutledge Huff**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. Dec. 8-15-22 [Seal]

Digitized by Google

Legal Notices

Jos. A. Burkhart, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Johanna Kennedy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. RICHARD A. O'BRIEN, 319 B St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,241. Administration. [Seal.] 49-3t

James F. Bundy and Geo. F. Collins, Solicitors
In the Supreme Court of the District of Columbia.
Howard Broadus, Complainant, v. Georgiana Broadus and Alphonso Waters, Defendants.
No. 24,903. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the grounds of adultery. On motion of the complainant, it is, this 29th day of November, A. D. 1905, ordered that the defendant, **Alphonso Waters**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, said order to be published in The Law Reporter and The Bee once a week for three weeks; otherwise the cause will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. [Seal] True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 49-3t

Geo. E. Tralles and A. A. Birney, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ellen Larguey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1905. ELLEN KILROY, Oneida, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,310. Administration. [Seal.] 49-3t

D. W. Baker and Fountain Peyton, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William O. Holmes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. WALTER H. BROOKS, 1425 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,012. Administration. [Seal.] 49-3t

SECOND INSERTION.

Joseph Salomon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Edward T. Farrar**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 21st day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of November, 1905. LUTHER H. POSEY, by Joseph Salomon, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,515. Admn. [Seal.] 48-3t

Legal Notices.

J. J. Darlington, Solicitor
In the Supreme Court of the District of Columbia.
Alexander B. Hagner et al. v. John H. Walter, Trustee, et al. No. 25,589. Eq. Doc. 57.
ORDER.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, beginning for same at the northeast corner of said lot 13, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 29th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innez Clark, ——Brown, —— Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, Junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks during the month following the first publication of this order, and twice a month during the ensuing month, and in The Washington Post twice a month for two months, good cause therefor having been shown. WENDELL P. STAFFORD, Justice. [Seal] True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. dec 1, 8, 15; jan 5, 12

Walter A. Johnston, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of James F. Peerce, Deceased.
No. 13,283.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of James F. Peerce and for letters testamentary, by Rebecca Delaney Hooe, as executrix, it is, this 28th day of November, A. D. 1905, ordered that **Thomas Hunter, Peerce Hunter, and Mrs. Lulu Hersperger**, heirs at law and next of kin of said James F. Peerce, and all others concerned, appear in said court on **Friday, the 29th day of December, 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star newspaper, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal] A true copy. Attest: James Tanner, Register of Wills. 48-3t

In the Supreme Court of the District of Columbia,
Hattie A. Mullican Byrnes et al., Complainants, v. Mary P. Brown et al., Defendants.
Equity No. 20,638. Docket 47.

Upon consideration of the report of A. A. Hoehling, jr., and Blair Lee, trustees, herein filed, wherein it appears that said trustees have received certain offers of purchase, at private sale, of lot Q, square 133, City of Washington, District of Columbia, among others, an offer of John T. Knott, of $1.07 per square foot; terms, one-third (⅓) cash, balance in one year, with interest at five per centum (5%) per annum, secured by deed of trust, it is, thereupon, this 29th day of November, A. D. 1905, ordered that sale of said lot to John T. Knott, at the above price, be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of December, A. D. 1905**. Provided a copy of this order be published in The Washington Post and in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. By the Court: WENDELL P. STAFFORD, Justice. [Seal] True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 48-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to give notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Lucippia A. Jones**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of November, 1905. EDWIN D. JONES, 409 B st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,196. Administration. [Seal.] 48-3t

John Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia. Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956. Docket No. 49.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 27th day of November, A. D. 1905, ordered that said trustee be authorized to accept the offer of Sue F. Chapman to purchase at private sale for twelve hundred dollars, lot 7, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lot be ratified and confirmed unless cause to the contrary be shown on or before the **27th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 48-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Emma M. Cutting**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of November, 1905. HARRY O. CUTTING, 1818 4th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,300, Administration. [Seal.] 48-3t

P. H. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William H. Lee**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of November, 1905. MARY L. LEE, 1740 V st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,299. Administration. [Seal.] 48-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **George Washington**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of November, 1905. FRANK P. REESIDE, 1003 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,178. Administration. [Seal.] 48-3t

Legal Notices.

J. D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen W. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of November, 1905. DENNIS J. O'LEARY, 46 S st. N. W. JOHN D. COUGHLAN, 500 Fifth st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,291. Administration. [Seal.] 48-3t

THIRD INSERTION.

J. Paul Earnest, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Julia Fisher Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1905. JOSEPH A. McKELLIP, 1821 Park ave., Balto., Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,284. Admn. [Seal.] 47-3t

George C. Gertman, Solicitor

In the Supreme Court of the District of Columbia. The Atkinson and Ballard Company, a Corporation, Complainant, v. The Unknown Heirs and Devisees of Benjamin Stoddert et al., Defendants.
Equity. No. 25,714. Doc. 57.

The object of this suit is to obtain a decree perfecting and establishing of record the complete title of the complainant to lots numbered twenty-three (23) and twenty-four (24) in Lloyd P. Pumphrey's subdivision of certain lots in square numbered sixty (60), in the city of Washington, in said District, as described in the bill of complaint. On motion of the complainant, by George C. Gertman, its solicitor, it is by the court, this 9th day of November, 1905, ordered that the defendants, the unknown heirs and devisees of Benjamin Stoddert; George Scott, executor, and in his own right; Jonathan Scholfield (of Issacker), executor, and in his own right; Mahlon Scholfield; Benjamin Waters, trustee, and in his own right; Sarah Talbot, Ann Dobey, John Balderson, Eliza Cowen, Lucretia Edmonston, John Woods, Rachael A. Levering, Joseph Scholfield, Hannah Scholfield, Sarah Scholfield, Lewis Scholfield, William Scholfield (of Mahlon); Elizabeth Hopkins, Rachael Hodge, Ann Scholfield, Thomas Scholfield, Andrew Scholfield, William Scholfield (of Issacker); Martha Stanton, James Stanton, Jane Anderson, Sarah Anderson, Mary Anderson, William Elliott, Joseph Elliott, Sarah Elliott, Margaret Elliott, Maria Elliott, Thomas Elliott, Mary Elliott, James Evans, (of Jonathan); John Evans (of Theophilus); George Evans, Cadwallader Evans, Oliver Evans (of Oliver); John Lampley, Elizabeth Lampley, Eliza W. Evans, Rachel Evans, Leah Evans, Thomas Evans, Evan Evans, Jesse Evans, Oliver Evans (of Joseph); Abner Evans, George Evans, Joseph Evans, Joseph Ball, William Brackin, Adeline Brackin, Elizabeth Brackin, Margaret Brackin, and Minnie Johnson, or if either or all of them be dead, then the unknown heirs and devisees of any or all of the above-named defendants, cause their appearance to be entered herein on or before the first rule day occurring forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order, otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once in November and three times weekly in December, 1905, prior to said return day, good cause having been shown by the bill and affidavit filed herein, to the satisfaction of the court, that further or longer publication is unnecessary. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] nov. 10; dec. 1, 8, 15

Digitized by Google

Legal Notices.

Benjamin S. Minor and T. Percy Myers, Solicitors

In the Supreme Court of the District of Columbia.
Tillotson E. Brown et al. v. Charles W. Brown et al.
In Equity, No. 25,580.

Upon consideration of the report filed herein of Benjamin S. Minor and T. Percy Myers, trustees, showing that they have sold at public auction the south 20 feet front of lot numbered 8 in square 417, improved by premises No. 1811 Eighth street N. W., to Tillotson E. Brown for the sum of $1,425, and sublot numbered 22 in square 417 to Tillotson E. Brown for the sum of $969, it is, this 22d day of November, A. D. 1905, by the court, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown, on or before the **22d day of December, 1905.** Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 47-3t

---

William D. Hoover, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Helen Morse Janin,** deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 11th day of December, A. D. 1905, at 10 o'clock A. M.,** as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of November, 1905. THE NATIONAL SAFE DEPOSIT, SAVINGS & TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer; by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,500. Administration.
[Seal.] 47-3t

Chas. W. Darr, Richard A. Curtin, Attorneys

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of William Santry, also known as William Sauntry, Deceased.
No. 13,273. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Annie Collins, it is ordered this 20th day of November, A. D. 1905, that notice be and hereby is given to **Ellen O'Brien, Jeremiah Driscoll, Patrick Santry, Michael Santry, Jeremiah Santry, Annie Santry, Annie Rawlette, Katie Carpenter, Margaret Carpenter, John Carpenter, Joseph Carpenter, May Carpenter, and Lily Carpenter,** and to all others concerned, to appear in said court on **Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.
[Seal.] 47-3t

W. L. Pollard and M. N. Richardson, Solicitors

In the Supreme Court of the District of Columbia.
Soloman H. Jones et al. v. Andrew J. Miller et al.
No. 25,108. Equity Docket No. —.

The object of this suit is to remove cloud upon title lot 8, square 315, in city Washington, District of Columbia. On motion of the complainant, it is, this —— day of November, A. D. 1905, ordered that the defendants, **Andrew J. Miller, Margaret V. Thompson, and Jessie McGlinchy,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and Evening Star once a week for three successive weeks. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.
[Seal] 47-3t

Legal Notices.

Chas. W. Clagett, Solicitor

In the Supreme Court of the District of Columbia.
Holding an Equity Court.
Arthur Browning et al, Complainants, v. Sue E. Browning et al. Equity No. 23,912.

Upon consideration of the petition of Charles W. Clagett and D. W. Baker, trustees, filed herein on the 23d day of November, A. D. 1905, stating that Percival M. Brown, trustee for Sue E. Browning, under the original decree filed in this cause on the 26th day of May, 1903, is desirous of purchasing lots sixty-eight (68), sixty-nine (69), and seventy (70) in Frank T. Browning's subdivision of lots in square numbered three hundred and sixty-seven (367) as said subdivision is recorded in the office of the surveyor for the District of Columbia, in book 15, page 134, and lot numbered fifty-four (54) in the heirs of John Davidson's subdivision of square numbered three hundred and sixty-seven (367), as per plat recorded in liber N. K., folios 102 and 103, of the office of the surveyor for the District of Columbia, for the sum of twenty-two thousand five hundred ($22,500.00) dollars cash, free and clear of all incumbrances, provided that one-third (⅓) of the net proceeds of sale is set aside to Percival M. Brown, as trustee for Sue E. Browning, as required by said original decree, dated the 26th day of May, 1903, passed in the above entitled cause, it is this 23d day of November, A. D. 1905, ordered, that Percival M. Brown, trustee for Sue E. Browning, be and he is hereby authorized and directed to purchase the real estate hereinabove described upon the terms above set out. It is further ordered: That Charles W. Clagett, D. W. Baker, and Percival M. Brown, trustees for sale herein, be and they are authorized and directed to accept said offer to purchase said real estate, unless cause to the contrary be shown on or before the **18th day of December, 1905.** Provided that notice of said sale and this decree be published in The Washington Law Reporter once a week for three weeks prior to the said 18th day of December, 1905. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.
[Seal.] 47-3t

Ernest L. Schmidt, Attorney

Supreme Court of the District of Columbia,
Holding Probate Court.
Estate of Richard W. Ryan, Deceased.
No. 13,263. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Edward B. Stumph, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to the **unknown heirs at law and next of kin of Richard W. Ryan** (deceased), and to all others concerned, to appear in said court on **Tuesday, the 26th day of December, A. D. 1905, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.
[Seal] 47-3t

Jos. H. Stewart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Special Term in Probate Court.
In re Estate of Milly Cook, Deceased.
No. 12,477.

This cause coming on to be heard upon the supplemental petition of the executor filed herein, and the same having been considered by the court, it is, this 22d day of November, 1905, by the court, ordered that said **Frank Rollins,** the alleged heir of Milly Cook, deceased, show cause on or before the **22d day of December, 1905,** why the last will and testament of said deceased should not be admitted to probate and record. Provided that this order be published once a week in The Washington Law Reporter and The Record, a weekly newspaper, published in Washington, D. C., for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills.
[Seal] 47-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W

Digitized by Google

Legal Notices.

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ulrich Banf**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. AMELIA E. ZIMMERMAN, 628 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,290. Administration. [Seal.] 47-3t

Carlisle & Johnson, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re Estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin.
No. 10,117. Adm. Docket, 28.

On consideration of the petition of Georgia Anne O'Neill, executrix, it is by the court, this 22d day of November, A. D. 1905, ordered that the sale of lot twenty-one in Webb and Bradley, trustees' subdivision of square five hundred and twenty-eight (528) as per plat recorded in Liber B, folio 65, of the records of the office of the surveyor of the District of Columbia, made by said executrix to Jeremiah Murphy, at and for the sum of $6,500, cash, subject to the payment to James F. Shea, of a broker's commission of three per cent (3%) on said amount, be ratified and confirmed, unless cause to the contrary be shown, on or before the **23d day of December, 1905**. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 47-3t

Harry G. Kimball, Solicitor

In the Supreme Court of the District of Columbia. Alice M. Peck, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Appelona Whitehair, Deceased, et al., Defendants.
In Equity. No. 25,782.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (103) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Appelona Whitehair, deceased, and the unknown heirs, alienees, and devisees of Justinian Mayberry, deceased, cause their appearance** to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times. [Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 12-19

Roach & Watkins, Attorneys

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re the Estate of Rose Bray, Deceased.
No. 13,275.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will of said deceased, and for letters testamentary on said estate, by Margaret Watkins, the executrix named in said will, it is ordered this 22d day of November, A. D. 1905, that notice be and is hereby given to **James Boyle, Laurence Boyle, Rose Ellen Lunny, John Angier, William Bray, Richard Whitehead, Mary B. Clancy, Ann B. Smith**, and to all others concerned, to appear in said court on **Friday, the 22d day of December, A. D. 1905, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 47-3t

Legal Notices.

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding Probate Court.

Estate of Alonzo J. Eaton, Deceased.
No. 13,248. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, or for letters of administration on said estate, by Alonzo J. Eaton, it is ordered this 21st day of November, A. D. 1905, that notice be and hereby is given to **Bernard L. Eaton**, and to all others concerned, to appear in said court on **Thursday, the 4th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

Carlisle & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Alexander Campbell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of November, 1905. JAS. J. CAMPBELL, Room 712, Carnegie Bldg., Pittsburg, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,277. Admn. [Seal.] 47-3t

Arthur Peter, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Frederick L. Collins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. KATHARINE V. COLLINS, No. 1633 31th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,259. Administration. [Seal.] 47-3t

Chas. Linkins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Charles J. B. Schutz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1905. JOHN C. SCHUTZ, 1450 Howard ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,274. Administration. [Seal.] 47-3t

Chas. W. Darr, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Catherine Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1905. PETER A. DRURY, 1432 Binney st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,266. Administration. [Seal.] 47-3t

Digitized by Google

Legal Notices.

FOURTH INSERTION.

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia. Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Alienees of George Mason and Others. No. 25,700. Equity Docket No 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and alienees of **George Mason, of William Mason, of A. E. Grimes,** and of **Elizabeth Hooe,** all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in the Washington Times. By the court: THOS. H. ANDERSON, justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal.]

nov 3-10; dec 1-8; jan 5-12

FIFTH INSERTION.

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia. Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants. No. 25,588, Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 3½ inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3½ inches; thence south 133 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3½ inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees,** cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and alienees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, —— Brown, —— Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

[Seal]

nov 10-17-24; dec 1-8; jan 5-12

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Legal Notices.

W. Spencer Armstrong, Solicitor

In the Supreme Court of the District of Columbia. D. H. Roland Drury v. Minnie Fuller and Others. No. 25,650 Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are **Minnie Fuller** (if living), and the unknown heirs, devisees and alienees of **Minnie Fuller** (if deceased), of **Andrew Scholfield,** of **Robert Leckie,** of **Ruth Fuller,** of **Calhoun Clark,** and of **Sarah F. Fitzgerald.** On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

[Seal]

nov 3-10-17; dec 1-8; jan 5-12

SEVENTH INSERTION.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia, Holding an Equity Court. Joseph Taber Johnson v. the Unknown Heirs, Alienees, or Devisees of Ann McWilliams et al., Defendants. Equity, No. 25,298.

The object of this suit is to perfect the complainant's title to part of original lot numbered twenty-seven (27), in square numbered one hundred and twenty-six (126), in the city of Washington, District of Columbia, and known and described as follows: Beginning for the same at the northeast corner of said lot twenty-seven (27) and running thence south with the dividing line between original lots twenty-seven (27) and twenty-eight (28) forty (40) feet, thence west twenty-six (26) feet, thence south twenty (20) feet, thence west twenty (20) feet, thence north sixty (60) feet, and thence east forty-six (46) feet to the place of beginning, and original lot numbered twenty-eight (28) in said square numbered one hundred and twenty-six (126), in the said city of Washington, District of Columbia. On motion of the complainant's solicitor it is this 26th day of September, 1905, ordered that the defendants, the unknown heirs, alienees, or devisees of Ann McWilliams, Elizabeth Tabbs, Clinton McWilliams, and Albert McWilliams; the unknown children of Hariot Stone, Benjamin Tabbs, Moses Tabbs, and Ann McWilliams, devisees of Barton Tabbs, deceased; the unknown heirs, alienees, or devisees of Joseph Stone and Alexander McWilliams, trustees under the last will and testament of Barton Tabbs; the unknown heirs, alienees, or devisees of Edward Gannon and Andrew Gannon; the unknown heirs, alienees, or devisees of William King, George French, trustee, Adam King, trustee, Stuart Williams, and Charles A. Beatty, cause their appearance to be entered herein on or before the rule day occurring after three (3) months from the first publication of this order. And it is further ordered that the defendants, Ann Smith, Henry George Morris, Henry W. Skerry, M. D., Gerome George Skerry, infant, Flora Deeley Morris, William George Morris, infant, Mary Joanna Morris, Anna Virginia Fountain and William I. Fountain, her husband, Louisa Frances Louitz and John B. Louitz, her husband, Michael Gannon, Mary Eleanor Shaw, Margaret Drury, Bartholomew Gannon, Elizabeth S. Smith, Isabel Smith, Ann Lane Smith, Virginia P. Smith, Marion B. Smith, Sarah H. Smith, Ella Smith, children, and Mary A. Smith, widow of Thomas Smith, deceased, cause their appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three (3) months once a week for three (3) successive weeks during the month following the first publication of this order and twice a month for the two (2) succeeding months in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

[Seal]

sept 29; oct 6-13; nov 3-10; dec 1-8, 1905

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 50

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - DECEMBER 15, 1905

CONTENTS.

Editorial 785
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
James T. Bradford, appellant, v. National Benefit Association, appellee 786
Computing Scale Company of America, appellant, v. The Automatic Scale Company, appellee 789
Legal Notices 795

Liability of Shopkeeper for Loss of Garment.

In Wornser v. Browning, King & Co., decided by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, it was held that a shopkeeper is under a duty to exercise ordinary care over a garment removed while a customer is selecting and trying on a new garment. It appeared that plaintiff went to defendant's store to purchase a vest, and at the suggestion of the clerk removed the vest he was wearing, in the pocket of which was his watch, and placed it on a pile of clothing while trying on another. When, after being waited on, he was ready to put on his vest again, it could not be found. In holding the defendant liable the court said that such liability was not limited to the value of the vest, but extended also to its contents. It was also held that the court may take judicial notice of the fact that men ordinarily during business hours wear their watches in their vests.

Accident Insurance—Proximate Cause.

In Ætna Life Insurance Company v. Fitzgerald, decided by the Supreme Court of Indiana (75 N. E. 262), the action was upon a policy of accident insurance which, by its terms, insured "against loss of business time . . . resulting from bodily injuries . . . through external, violent, and accidental means." It was held that the policy covered a loss of business time by disease proximately caused by a bodily injury occurring through external, violent, and accidental causes. It appeared that plaintiff placed his hand on edge, with the thumb next to his head, in order to rest easier at night, and while asleep in such position moved so that his hand, with his head thereon as before, rested on the edge of the bed rail, in which posture he continued for several hours, when he awoke, finding his hand wholly numb, with a black mark thereon where it rested on the rail. Inflammation of the periosteum of the metacarpal bones resulted, necessitating a surgical operation and causing a protracted illness. It was held that, in the absence of evidence that the inflammation was due to any other cause than the long-continued force exerted by the weight of plaintiff's head on his hand, such cause was an efficient proximate cause of the injury, within an accident policy insuring against loss of business time from bodily injuries effected through external, violent, and accidental means.

MR. SAMUEL M. YEATMAN, for many years the secretary of the Georgetown University School of Law, died at his residence in this city on Wednesday morning, December 13, 1905. Mr. Yeatman was a member of the Bar of the District, though not actively engaged in practice, being constantly employed in responsible positions in the Government service. His long and acceptable service as secretary of the Law School gave him a wide acquaintance with the members of our courts and the bar, and they entertained for him a most cordial regard. Mr. Yeatman was a man of high character and fine ability, and a wide circle of friends mourn his untimely death.

THE Court of Appeals of the District has affirmed the judgment of the trial court in the case of Hamilton v. United States. The appellant was convicted of murder in the first degree and sentenced to death by hanging, but execution of the sentence was stayed pending the appeal.

Carriers—Care Required in Operating Passenger Elevator.—Persons operating elevators in stores are common carriers of passengers and bound to exercise the highest practicable care to prevent injuries to them. Hensler v. Stix, (Mo.), 88 S. W. Rep. 108.

Broker—Nondelivery of Stock.—A broker, failing to deliver stock purchased for a client, held liable for the money paid by client on account to apply on the purchase price. Hoogewerff v. Flack (Md.), 61 Atl. Rep. 184.

Digitized by Google

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1905.

JAMES T. BRADFORD, APPELLANT,

v.

NATIONAL BENEFIT ASSOCIATION, APPELLEE.

JOINT STOCK COMPANY; LIABILITY OF MEMBERS AS PARTNERS; INSOLVENCY; WITHDRAWAL OF MEMBER; EVIDENCE; INSTRUCTIONS; REMARKS OF COUNSEL.

1. In an action against the appellant and others as shareholders in an unincorporated joint stock company conducting a savings bank, and which had become insolvent, to recover the amount of deposits made by the plaintiff, it appeared that, by the articles of agreement, any member might withdraw his funds by giving 30 days' notice, or might transfer his stock to another member of the company without the consent of the directors. Prior to the deposit by plaintiff the appellant sent a letter to the directors notifying them that he had sold his shares to another member and directing the transfer of the same, with which direction the directors, for some reason, refused to comply. The evidence for the plaintiff tended to show that, subsequent to the writing of such letter, and covering the time within which plaintiff's deposits were made, appellant had been elected a director of the bank, had attended meetings of the board, and had participated in its business; that he had also given proxies to other members to represent him at meetings of stockholders. It also appeared that the bank had circulated leaflets in which his name was given as one of the directors, and the circumstances indicated that he had knowledge of such leaflets and their contents. Held, that upon this evidence, the trial court properly charged the jury that if, after writing the letter, the directors refused to transfer the stock, and appellant thereafter acted as director, and in person or by proxy participated in stockholders' meetings, then he was not relieved from liability.
2. Instructions requested on behalf of appellant to the effect that the sale of his shares, with notice thereof to the bank, relieved him from liability as a partner, and that the giving of proxies to members of the company to represent him in stockholders' meetings did not restore him to membership, properly denied.
3. Remarks of counsel for plaintiff, in his argument to the jury, while unjust to appellant, held not so prejudicial as to deprive him of a fair trial.

No. 1561. Decided December 5, 1905.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,851, entered upon the verdict of a jury in an action against defendant, as a member of an unincorporated joint stock company conducting a savings bank, to recover the amount of a deposit. Affirmed.

Mr. John Ridout for the appellant.

Mr. A. A. Birney for the appellee.

Mr. Justice MCCOMAS delivered the opinion of the Court:

The National Benefit Association, the appellee, as a depositor with the Capital Savings Bank, which failed November 24, 1902, brought suit to recover the unpaid deposits against James T. Bradford, appellant, and others, as partners, doing business under the name of the Capital Savings Bank.

The appellee claimed that when it became a depositor the appellant was a stockholder and therefore a partner in the bank, which was not incorporated. The appellee introduced evidence tending to prove that the appellant, among others, signed articles of agreement which provided, among other things, that the members signing associated themselves together to carry on a banking business under the firm name of the Capital Savings Bank, from October 1, 1888, to until October 1, 1908, the capital stock being $50,000 in shares of $100 each.

Section 12 of the agreement provides that any member of the company may withdraw his funds by giving thirty days' notice, the company reserving the right to postpone payment ninety days after such notice of withdrawal.

Section 16 provides that no member shall transfer his stock or interest in the company to any person other than a member of the company without the consent of the board of directors.

The appellee became a depositor August 5, 1899, and it alleges that a large balance stood to its credit when the bank closed its doors.

The appellant, who was a stockholder, wrote and mailed the following letter, one Williams named therein being also a stockholder:

BALTIMORE, March 13, 1897.

TO THE PRESIDENT AND BOARD OF DIRECTORS OF THE CAPITAL SAVINGS BANK,
609 F st. N. W., Washington, D. C.

I hereby give notice of my withdrawal as per constitution, as a stockholder in said institution, and direct that you transfer the stock standing in my name to Howard H. Williams, Washington, D. C., and oblige,

Yours truly,

JAMES T. BRADFORD,
N. W. corner Center and St. Paul sts.

The shares of stock being transferable only on the books of the company, the appellant delivered the shares to the secretary for transfer, and thereafter received evasive replies from the president and treasurer when he inquired why the stock had not been transferred. The appellant, himself a depositor, during twelve years had $13,000 on deposit when the bank closed its doors. He testified that he understood he had been elected a director, but he never attended a meeting and never consented to act as such. Terrell, the secretary, in 1898, told appellant the board refused to act on his withdrawal; in April, 1902, Terrell saw appellant at a meeting of directors. On October 9, 1899, appellant gave McCary, the cashier, a written proxy to represent appellant at a regular stockholders' meeting. Minutes of a meeting of directors held February 16, 1900, identified by Terrell, secretary, who kept them, recited the presence of appellant, who made remarks concerning a reorganization. At stockholders' meetings on December 6, 1902, appellant's shares were represented by McKinlay, his proxy; appellant's certificates were still in the secretary's possession, and not entered as transferred because the board had refused to so order. Several times appellant protested against such refusal. Williams, who purchased appellant's shares and made a payment thereon, did not complete the negotiation because of the refusal of the directors to make such transfer. Certain leaflets containing the appellant's name as director were in evidence, and Stewart, a depositor, who was anxious, testified that about April, 1902, at the bank, appellant looked over one of these, and remarked that four or five

Digitized by Google

men thereon were worth sufficient to pay all the bank's liabilities. Such was the substance of the testimony on both sides. Upon this conflicting evidence, under the court's instruction, the jury found a verdict for the plaintiff. The appellant, Bradford, was allowed a severance upon his appeal, and the case comes here upon his bill of exceptions.

We find no error in the rulings of the learned court below in admitting the evidence objected to. There are seven assignments of error of the court below in admitting testimony.

The testimony on the appellant's behalf tended to show that he had withdrawn from the company and had sold his stock in 1897, that he had terminated his membership and was not liable as a partner to subsequent depositors. On the appellee's part the court admitted subsequent acts and declarations of the appellant, tending to show that he remained a stockholder and acquiesced in his election as a director of the Capital Savings Bank.

Thus the appellee sought to show that on October 9, 1899, the appellant gave McCary, the bank's cashier, his proxy to represent him at a meeting of stockholders; Terrell, secretary of the bank, who also acted as secretary of the meeting of stockholders and directors, identified the minutes in his own handwriting and testified that the minutes record the presence and participation of the appellee on February 6, 1900, and on April 9, 1902, in meetings of the bank's directors, and that he was represented by McKinlay at two stockholders' meetings in December, 1902; that certain printed leaflets bearing the appellant's name thereon as one of the directors were circulated by the bank; that circumstances in evidence indicated that appellant had knowledge of such leaflets and of their contents; that the certificates for the forty shares of stock claimed by appellee to have been sold were in Terrell's custody, some signed by appellee for transfer on the book and some unsigned. All such circumstances, minutes, and other writings were clearly admissible to prove the appellant's participation in the affairs of the bank, as stockholder or director, or both, after the time the appellant claimed to have withdrawn, and certain of these tended to show that the appellant knew and acquiesced in the conduct of the bank's officers in printing his name as a director. Such testimony tended to show how the bank's officers and directors, after the appellant's letter of withdrawal, treated the appellant, and how far he assented to the refusal to transfer his stock, and whether, in fact, he thereafter acted as a director and remained a stockholder. The learned court did not err in admitting such evidence, nor, as claimed in the eighth assignment of errors, did the court err in refusing to permit McKinlay, the proxy of appellant, to testify to appellant's intention in giving him such proxy.

It appears by the record that appellant, in proffering McKinlay to show appellant's intent in being present after April, 1897, at meetings of directors and stockholders, admitted the presence of the appellant at such meetings.

A joint stock company is "a partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the copartners." 1 Parsons on Contracts, star page 144. Hedge and Horn's Appeal, 63 Pa. St. 273. The articles of the Capital Savings Bank provided for such transfer, and also provided a method for withdrawal from the company.

The court granted the three prayers of the appellee.

First. The jury was instructed that if the appellant, a stockholder, sent the letter of March 13, 1897, and delivered his certificates of stock, that the directors refused to transfer his stock as he requested, and that appellant thereafter acted as director and stockholder, and in person or by his proxy voted at stockholders' meetings, the appellant is not relieved of liability.

Second. The jury was instructed that if during the period when the appellee was making deposits in the bank the appellant acted as a director of the bank, and was to his knowledge held out to the public as such, the appellee should recover.

Third. The jury was instructed that if the letter of March 13, 1897, was sent to the bank officials, but the shares were never transferred, and the appellant continued to act as owner of the shares and to vote in person or by proxy as owner thereof at stockholders' meetings, the jury could infer that the appellant had abandoned his intention to transfer the shares and waive his notice of withdrawal and remain liable as a partner.

These propositions correctly state the law applicable to the evidence from the appellee's standpoint, and there was no error in granting the appellee's prayers containing them.

Respecting the second instruction, it is to be noted that there was evidence tending to show that the appellant knew his name was printed on leaflets of the bank among its directors. This, with other circumstances tending to show that he was a director, justified the court in submitting to the jury to findwhether the appellant acted as a director, and was to his knowledge held out to the public as such by the bank during the period mentioned. Indeed, if they found that the appellant acted as a director it was not necessary to find the latter fact.

We observe, however, these instructions and the learned court's charge to the jury omit a material element, the indebtedness of the Capital Savings Bank to the appellee. This fact was put in issue by the pleadings. It is so manifest from the record that this material fact was not disputed, but was conceded at the trial, that the omission affords no ground for reversal in this instance.

We also think the clause "there being no evidence of any change in the relations of said Bradford to the bank after such acts as director and shareholder," at the conclusion of the appellee's second instruction, as we have before recited it, is objectionable. It makes the court assume the fact instead of leaving it to the jury to find the fact that there was no evidence of any change in Bradford's relations to the bank after such acts. The court responds to the law, the jury to the facts. In this case, however, there appears to have been no such evidence. We are satisfied the fact assumed did not influence the verdict.

Digitized by Google

We find no error in the refusal of the court to grant the appellant's prayers.

The first asked the court to say, as matter of law, that thirty days after the receipt of appellant's letter of withdrawal, dated March 13, 1897, his liability as partner ceased.

The second coupled with this letter the sale or attempted sale of his stock to Williams, with notice to the bank thereof, and asked the court to say as matter of law that these two circumstances taken together put an end to the appellant's liability.

The third, assuming said letter and the sale to Williams to have put an end to appellant's liability, ask the court to say, as matter of law, that appellant's proxy to McCary did not *restore* the appellant to membership in the savings bank. This instruction, in addition to assuming the correctness of the erroneous propositions of the first and second instructions, segregated testimony as to one act of the appellant from the testimony as to other acts and declarations of appellant tending to show that the appellant had not ceased to be a member, and asked the court to say that this single act did not *restore* the appellant to such membership.

The fourth asks the instruction that if the jury find the appellant sent the proxy dated October 9, 1899, unless the jury further find the appellant did so with intent to resume membership and find that the sale to Williams (if made) was rescinded, and the appellee, with notice of these facts, made further deposits upon the faith of the appellant's membership, the appellee could recover only for such further deposits.

The fifth, saying that if the stock in the appellant's name was not really his, he would not be liable, is not predicated of the evidence in this case.

The learned court below committed no error in rejecting the five instructions asked by the appellant.

The appellant was a stockholder and liable as a partner in this bank to its depositors under conditions. He could have withdrawn by giving notice and by conforming to section 12, already quoted. Thus he would have terminated his membership and liability. He could have obtained, by following section 16, the same relief from liability by transfer of his stock to another member of this joint stock company. It was not necessary for appellant to ask the approval of the bank to his transfer of his stock to Williams, another member. The appellee's letter of March 13, 1897, could not be a withdrawal, however, under section 12, for that section contemplates a settlement to be made with him, and after ninety days the payment of what was due him, and of course involves the surrender of his certificates of stock. The letter was, therefore, a direction to transfer his stock, under section 16, to Williams, a fellow member, who appears by the record to have agreed to purchase the same. The transfer was never made on the books of the company. The appellant did not persist, and his certificate, as the result of the evasion or refusal of the officials of the bank, remained in the hands of Terrell, the secretary. It does not appear that Williams made efforts to complete the sale and procure the transfer of appellant's shares.

Manifestly the court could not say, as matter of law respecting such inchoate transactions, that what was done by the appellant or on his behalf had terminated his membership and his liability as a partner in the banking business. If the relation of the appellant to the joint stock company because of the letter of March 13, 1897, and the delivery of his certificate to the secretary be, for the purposes of this case, considered a doubtful and uncertain relation, if thereafter at intervals and until the bank closed its doors the appellant acted as a stockholder and as a director by attending the meetings of such, or otherwise suffered himself to be given out to the public as such, thereby he made himself liable as a member to this appellee, a depositor, commencing its deposits in August, 1899. 1 Parsons on Contracts, star page 145.

We have examined the charge of the court below and believe there was enough therein to remind the jury of the material elements of the appellant's defense to prevent the reversal of the judgment for want of it.

During the argument before the jury the appellee's counsel reflected upon the appellant, saying that he knew the bank was in failing circumstances, and yet allowed deposits to be made up to a few days before its doors were closed; "in many States of this Union such conduct would land him in the penitentiary, as it ought to do here." This statement was not warranted by the testimony in the case. It is not disputed that the appellant had lived for many years in Baltimore, and that when the bank failed the appellant was a depositor to the extent of $13,000, and as such suffered a loss greater than that of the appellee.

The controversy in this case itself was whether or not the appellant was a director or even a stockholder. It nowhere appears that the appellant doing business in Baltimore was active in managing the affairs of the Capital Savings Bank. With all the testimony before them, we consider the ardor of advocacy in this instance led appellee's counsel to make a statement unjust to the appellant, yet not so prejudicial as to deprive the appellant of a fair trial.

The Supreme Court said in Dunlop v. U. S., 65 U. S. 498: "If every remark made by counsel outside of the testimony were ground for a reversal, comparatively few verdicts would stand, since in the ardor of advocacy and in the excitement of trial, even the most experienced counsel are occasionally carried away by this temptation."

The court below might have interfered with propriety and required counsel to withdraw the remark, but we would not be justified in reversing the judgment on account of this incident.

The judgment in this case will be affirmed, and it is so ordered.

Affirmed.

Master and Servant—Engineer's Right to Assume Track in Good Condition.—A railroad engineer has a right to assume that the track is in good condition, unless he has actual knowledge to the contrary.—Southern Ry. Co. v. Stittasen, Ind., 74 N. E. Rep. 898.

Digitized by Google

Court of Appeals of the District of Columbia.

COMPUTING SCALE COMPANY OF AMERICA, APPELLANT,
v.
THE AUTOMATIC SCALE COMPANY, APPELLEE.

No. 1572. Decided November 22, 1905.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in equity, No. 23,430, dismissing a bill to enjoin the alleged infringement of a patent. Affirmed.

Messrs. Church & Church for the appellant.

Mr. E. Hilton Jackson and *Mr. H. P. Doolittle* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This suit was brought for the alleged infringement of letters patent No. 700,919, issued May 27, 1902, to the appellant, as assignee of Austin B. Hayden, for alleged improvements in computing scales. The invention relates particularly to computing scales of the spring ballance type, and its main object, as stated, is to increase the computing capacity of scales of this type. It may be said that a computing scale is a device which enables the price of the article weighed thereon to be at once read upon the scales, thus avoiding the necessity of mathematical calculation upon the part of the operator.

The art in question was quite fully developed at the time when Hayden filed the application upon which the patent in suit issued. The record discloses one patent issued some fifty years ago, and, it may be, as urged, that its device was not a commercial success, although the record is silent as to this. Like many other inventions, it very likely was born out of due season, and long before the demands of trade led to a commercial demand for computing scales. Nevertheless, the patent and others set forth in the record cannot be overlooked in considering the state of the art. Other patents were issued at later dates, disclosing various improvements, and Hayden's invention is, therefore, but one of many improvements contributed by one of many inventors. While his application was pending it appears from an examination of the record that other inventors were at work in this art, and improvements similar to those set forth in the Hayden patent were disclosed in other applications for patents. In the absence of testimony the fair inference to be drawn from this fact is that the desirability for such improvements having become known, a solution of the problems occurred to many minds, and when that solution is shown to be the same, that no great exercise of inventive talent was called into play.

Hayden, as the record discloses, is not a pioneer in the art, but as an improver he is entitled to such recognition as his contribution to the art warrants, and his assignees to protection to the same extent, subject, however, to such limitations, if any, as either of them permitted to be imposed upon the grant as disclosed by the file wrapper and contents of the application upon which the patent issued. No such limitations, nor any abandonment of any part of the invention, is to be presumed, but must be shown by clear and convincing proof. While the courts are vigilant to protect the public, which is interested in having even a lawfully patented invention kept within legal bounds, they should be equally zealous to find the contribution which the inventor has made to the art to which his invention relates and to protect him to the full extent of that contribution; but in so doing they must give due weight to any estoppel which he has created by reason of anything done by him, or suffered to be done, either prior or subsequent to the issue of his patent, which prevents him from claiming his invention in its entirety.

To the patent we turn for a description; to the file wrapper and contents of the application, and to the prior art, for the limitations to be imposed upon the claimed invention.

Mr. Brown, appellant's expert, has fairly and clearly set forth the general construction and operation of the device of Hayden's patent. He says:

"The two principal parts of the mechanism are as follows: 1st, a vertically arranged, non-rotating frame, which comprises and includes a vertical cylindrical casing, which encloses, conceals, and protects the major portions of the operating portions of the scale, and upon which are marked the price indications, which indicate the price per pound at which the articles weighed are to be sold. As clearly shown in the drawings, this external casing or frame is provided with a vertically disposed sight opening, through which the coacting mechanism is observable, and along one vertical edge of this sight opening are arranged the numerals indicating the price per pound, these numerals in the illustrated instance running consecutively from 2 to 30.

"The second of these principal parts is a second cylinder, located within the casing, this cylinder constituting a computing cylinder or chart drum, upon which are placed indications indicating the weight in pounds of the article weighed, and also having other indications indicating the price of an article weighed, corresponding to the weight and to the price per pound. This chart drum or computing cylinder extended vertically within the external casing, and it is arranged to rotate on a vertical axis within the external casing. This casing is appropriately connected to the spring balancing mechanism and to the scale pan, so that when the spring balancing mechanism moves up and down on the placing or removing of a load on the scale pan, the chart drum will be rotated in one direction or the other within the external casing or frame.

. . . . . .

"As shown in figure 2 of the drawings, the weight and value-indicating figures are placed in horizontal rows on the external surface or periphery of the rotatable chart drum of the computing cylinder, the weight indications being shown in a horizontal row at the bottom, and the price indications in horizontal rows above, there being as many of these horizontal rows of price-indicating figures as there are 'prices per pound' indicating figures on the fixed external casing. These value-indicating

Digitized by Google

figures on the chart drum are computed at different rates, corresponding to the 'price per pound' figures on the external casing. As indicated in figure 2 of the drawing of the patent, there is supposed to be a weight on the scale pan of pounds, this weight being indicated on the weight scale, and it will be seen that in such instance the various value indications on the chart drum opposite the 'price per pound' indications on the fixed casing are in each illustrated instance five times as great as the corresponding 'price per pound' indications. The drawings illustrate only a portion of the indicating figures on the chart drum, but it will be understood in practice that this drum will be entirely covered on its external surface with figures corresponding to the weights multiplied by the figures indicating 'price per pound' on the non-rotatable external casing. Accordingly, whenever the interior chart drum is turned a distance corresponding to the load placed on the scale pan, the value of the load can be read at once opposite the figures on the external casing, which correspond to the price per pound of the article weighed.

"The various price indications on the chart drum are visible through the sight opening in the external casing.

"The mechanism whereby the chart drum is rotated a distance corresponding to the weight of the load plan is as follows: The balancing mechanism is a spring balance comprising two springs, clearly shown in figure 3 of the drawing, which are suspended from a suitable portion of the non-rotating frame of the scale. To the lower ends of these springs is attached a cross-bar, in the middle of which depends a rod indicated by the letter E, this cross-bar and rod constituting the runner of the scale. The scale pan is suspended from the lower end of this rod as illustrated in figure 1. When a load is placed on the scale pan the vertical runner moves vertically downward, distending the spring to an extent proportional to the weight of the load. In order to indicate the weight this vertical movement of the spring-supported runner is converted or translated into a rotary movement of the chart drum by suitable intervening mechanism. In the specific embodiment of the invention, as illustrated in the drawings, this intervening mechanism consists of a spiral groove of high pitch on the vertical rod E and two rollers journaled in suitable bearings carried by the rotatable chart drum, the bearing of one of these rollers being spring pressed, so that the rollers are held in yielding contact with the spiral groove on the rod. Consequently, as the rod moves vertically, the spiral groove thereof causes the chart drum or computing cylinder to rotate on its vertical axis.

"Accordingly, the mechanism is such that the vertical movement of the runner is translated into rotary movement of the chart drum, and the chart drum is rotated to an extent proportional to the vertical movement of the runner."

The specification of the patent ends with eleven claims, of which one, two, six, seven, and eight are alleged to be infringed. It will, however, be necessary to only consider claims one and six. Claim two differs from claim one, barring certain immaterial variations in phraseology, in that it limits the spring-supported, load-bearing, and cylinder-revolving rod to one that is "non-rotably" suspended from the casing. Claims seven and eight admittedly do not differ patentably from claim six, these three claims stating in varying phraseology the same invention—one of the many examples of word painting too often found in letters patent.

Claims one and six are as follows:

"1. In a spring-balance computing scale, the combination of a suitably supported vertical non-rotatable casing provided with a price index, a vertical rotatable computing cylinder journaled in said casing, provided with cost computations, a spring supported load bearing and cylinder revolving rod suspended from said casing, and connecting means between rod and computing cylinder, whereby, by longitudional movement of the rod, rotary movement is imparted to said cylinder, substantially as and for the purpose set forth.

"6. In a spring balance, the combination of a non-rotating frame providing an external casing, and having means for supporting it from above weighing springs secured at their upper ends to rigid parts of said frame, a vertically movable runner which is suspended from the lower ends of said springs and is provided with depending means to support the load, a chart drum rotatably mounted within said casing on a vertical axis and having external horizontal rows of value-indicating figures computed at different rates, said casing having a sight opening through which portions of said value-indicating rows may be seen, and corresponding rate-indicating figures on the outer face of said frame adjacent to the value-indicating rows on the chart drum, and mechanism for translating the vertical movements of the runner into the rotary movements of the chart drum."

The defenses are the ordinary ones of anticipation, non-patentability, non-infringement, and prior invention by one Christopher. While it will not be necessary to consider any but those of non-infringement and absence of patentable invention, we have, however, examined the evidence relating to the alleged priority of invention by Christopher, and from such examination we do not find sufficient to warrant a finding that Christopher is shown to be a prior inventor of the subject-matter set forth in the claims in suit. For a correct determination of the questions of patentability and infringement the claims must be considered in the light of the prior art and of the proceedings in the Patent Office. If the claims are valid and can be taken at their face value they are clearly infringed.

The limitations arising out of the prior art, if any, will be found in the following patents: Phinney, No. 106,869, August 30, 1870; Beckwith, No. 12,249, January 16, 1855; Babcock, No. 421,805, February 18, 1890; Freeman, No. 431,456, July 1, 1890; and Smith, No. 545,616, September 3, 1895.

Phinney discloses a spring-balance computing scale comprising a suitably supported non-rotatable case having a price index, a rotatable computing cylinder journaled in said case provided with cost computations, a spring supported load bearing and cylinder revolving rod

Digitized by Google

suspended from the case, and connecting means between the rod and computing cylinder, whereby a longitudinal movement of the rod rotary motion is imparted to the cylinder.

Comparing this device with the patented structure which is the subject of claims one and two, it is apparent that the main difference between the two, broadly considered, is that Hayden's cylinders are arranged vertically, while Phinney's are arranged horizontally. It is shown, however, that such arrangement of a cylinder of a cost computing scale was old long before any date that can be assigned to Hayden. Beckwith's patent No. 12,249, of January 16, 1855, discloses this. Invention cannot be predicated upon differently positioning the cylinders, and this we understand is not seriously controverted. Freeman, No. 431,456, is another example of a rotatable cylinder carrying the computations and mounted to move vertically.

The prior patents to Babcock, No. 421,805, and Smith, No. 545,616, disclose spring-balance computing scales, having suitably-supported horizontal stationary cylinders (or, as in the Babcock patent, an equivalent therefor), provided with price marks and rotatable chart drums operatively connected to the vertically movable load-supporting rod. In the light of these patents, and especially the Smith patent, we can discover little room for broad claims for a combination of elements, such as set forth in the claims in controversy. While Smith's construction differs from that of the patent in suit in the relative arrangement of the casing and cylinder, in other respects they differ patentably only in details of construction. There being no invention, in view of the prior art, in substituting for the horizontal case and cylinder of the Smith patent the old vertical arrangement of those parts, the first and second claims of the patent in suit must, if they are to be held valid, be limited to the specific forms of the parts set forth in the claims. The line of demarcation between Hayden's patented structure and those of the prior art is, at the best, but slight. His device may be commercially better than the prior devices, but there is no evidence before us to show that this has been recognized by the commercial world, or that the patented device has supplanted the prior devices, or that it has gained any recognized position. The record is silent as to all these points.

It being the duty of the court, as stated, to find what contribution Hayden has made to the art, we turn to the specification to find what Hayden had actually contributed. We find that, broadly considered, the elements of the claims, referred to are old, and that they have been arranged in substantially the same manner and thereby have produced substantially the same result. We, however, find some specific forms of parts of the device that apparently are new, and therein lie the novelty of the device. The main novelty seems to reside in the construction of the spring-supporting, load-bearing, and cylinder-revolving rod, and the means by which the longitudinal movement of that rod produces the rotary movement of the cylinder. The specification states that the load-supporting and cylinder-actuating rod is provided with a spiral groove which moves between rollers centrally located on the inner surface of the bottom of the cylinder. It further states that, "It will be noted that in the construction shown, the rod E is non-rotatable, and this is the preferred construction. The spiral rod passing through the lower ends of the casing and serving, by means of its connection with the two cylinders, to rotate the computing-cylinder, is regarded as the essence of this feature, of the invention, however, regardless of the precise details of connection between cylinders and rod. The spiral of the rod E may be regarded as a motion-translating member, and the anti-friction rollers *ff*, engaging said spiral, may be regarded as an anti-friction member coacting with said spiral. It is necessary that one of said motion-translating members be supported by the spring of the scale to have a simple vertical movement, and that the other motion-translating member shall be connected directly to the computing cylinder to impart rotary motion thereto. Thus one of said motion-translating members moves with the computing cylinder about a vertical axis, while the other acts as a spring-supported runner which engages the cylinder carried or connected member and has its own vertical movement translated into a rotary movement."

We have not overlooked the statement that in the preferred construction the rod is non-rotatable, and that claim one is not limited in terms to a non-rotatable rod. Nor have we overlooked the fact that neither in claims one or two is there a limitation in terms to the specific construction of the rod, and to the specific means by which, in connection with the rod, movement is imparted to the cylinder. It is evident that Hayden thought that his invention was broader than in our opinion it proves to be, and so claimed it. Nevertheless, we can see no escape from the conclusion that claims one and two are devoid of patentable inventions unless limited to combinations, one element of which is a rod provided with a spiral adapted to engage with rollers coacting therewith. It may be that when so construed and limited claim two will not patentably differ from claim three, but it is unnecessary to pass upon that question at this time. If we are correct in limiting claims one and two to the specified form of the rod and the coacting means by which motion is imparted to the cylinder, then, admittedly, the defendant does not infringe, for its structure does not have the rod provided with a spiral, and consequently the means for producing rotary movement of the cylinder are different. It is admitted by appellant's counsel that the appellee is not shown to have used the specific form of translating device shown and described in the patent.

What we have said in reference to claims one and two applies equally to claims six, seven, and eight, for each of these have as an element mechanism for translating the vertical movement of the runner into the rotary movements of the chart-drum. This mechanism is the rod provided with spiral and the rollers journaled on the inner surface of the bottom of the cylinder. The defendant does not employ such mechanism, and its mechanism can not be held to be an equivalent. Claim six, however, in our opinion, can not be held valid in view of the proceedings in the Patent Office, as shown by the

Digitized by Google

file wrapper and contents of the application upon which the patent issued. It appears that a claim was presented identically the same as this claim, save that it omitted the word "depending" before the phrase "means to support the load," or, in other words, was not limited to a structure where the means for supporting the load to be weighed was below the scales. The office held that the claim as presented was not patentably distinguishable from a prior patent, saying:

"Upon consideration of claim six, preparatory to the declaration of interference, it is found that the claim does not clearly and patentably distinguish from the scale shown in the patent to Herr, No. 651,801, June 12, 1900, price scales, and it is therefore necessary to reject the claim. It is believed, however, that the claim may be rendered allowable by inserting *depending* before 'means' in line 6."

This Herr patent is not in evidence, but that is immaterial, for, whether the examiner was right or wrong, the patentee having acquiesced in the ruling, neither he nor his assignee can be heard to question the correctness of the ruling. The courts have gone so far as to hold that even where the ground of an objection, made by the Patent Office and acquiesced in by the applicant, was later held by the Supreme Court not to be a valid one; that, nevertheless, the applicant thereafter is bound by it. Blades v. Rand, McNally & Co., 27 Fed. 93. Of course, it is not contended by appellant that the claim can be read as though the word "depending" had not been inserted, but as we understand it, the rule goes further than merely holding that the limitation can not be read out of the claim. It goes to the extent of holding that "the claim as allowed must be read and interpreted with reference to the rejected claim." Hubbell v. United States, 179 U. S. 77. A claim differing from claim six only in omitting the word "depending" having been rejected, the allowed claim must depend for vitality upon the fact that it involved invention in a computing scales to employ depending means for supporting the load to be weighed. Some means, of course, had to be employed for supporting the load, and the substitution of one old arrangement for another would scarcely involve or show invention. Depending means for supporting the load were old and most common in computing scales. Examples are to be found in the patents to Babcock, Beckwith, Smith, and others heretofore cited. The depending means for supporting the load to be weighed being old and their substitution in an old combination is insufficient to warrant a finding of patentable invention. The patentee having admitted that the claim as presented was met by the reference, and having, to avoid the reference, inserted a non-patentable limitation, his assignee, being bound by such action, can not escape the penalty.

Claims seven and eight, being but restatements in somewhat different phraseology of the same alleged invention as recited in claim six, are also devoid of patentable invention. Our conclusion is that the claims in suit are not infringed when limited, as they must be, by the prior art, and that claims six, seven, and eight are void for lack of patentable invention, as disclosed by the proceedings in the Patent Office and by the prior art.

It follows that the decree of the Supreme Court of the District of Columbia was correct, and it will therefore be affirmed with costs. It is so ordered.

Affirmed.

Definition of "Papers Read in Evidence."

In Chicago & J. Electric R. Co. v. Spence, 72 Northeastern Reporter, 796, which was a personal injury case, an X-ray photograph was admitted in evidence, and the expert who made it testified that he had taken and developed the negative, and that it was an accurate and correct representation. Another X-ray expert, called by the opposition, expressed the opinion that the picture was of little or no value. The point was made that it was error to allow the jury to take the skiograph or X-ray picture with them when they retired to consider their verdict. The law in Illinois permits "papers read in evidence, other than depositions," to be carried by the jury into the jury room. The court holds that skiographs produced in evidence in a trial before a jury are "read" in evidence, within the definition of the word "read," as given by Webster, viz., to discover or understand by characters, marks, features, etc.; to gather the meaning of by inspection; to learn by observation.—American Lawyer.

Liability for False Imprisonment.

In Rush v. Buckley, 61 Atl. Rep. 774, the Supreme Judicial Court of Maine has rendered an important decision regarding liability for false imprisonment. The plaintiff, having been arrested under a warrant from an inferior court, for violating a municipal ordinance which was void because never published as required by law, sued the judge who issued the warrant, the officer who served it, and the person who made the complaint. The court holds that the person who made the complaint was not liable, because he took no part in making the arrest and did nothing more than merely to make the complaint before a magistrate having jurisdiction of the party and of the general subject-matter. The officer who made the arrest was also held not liable, because the warrant did not show on its face that the court issuing it, which had general jurisdiction over the subject-matter, did not have jurisdiction over the particular offense alleged, or that the facts stated in the complaint did not constitute an offense because of the failure to properly publish the ordinance. As to the judge who issued the warrant, the court holds that, although his court was one of inferior jurisdiction, yet, since it was invested with jurisdiction over the general subject-matter, his decision that he had jurisdiction over the particular offense complained of, while erroneous, nevertheless constitutes a judicial decision for which he is not liable, having acted in perfect good faith. Emery, J., delivered a vigorous and impressive dissent to so much of the decision as holds the judge and the officer not liable.—Law Notes.

Digitized by Google

Judicial Notice of Automobiles.

In Ex parte Berry, 82 Pac. Rep. 44, the California Supreme Court, in holding that a county ordinance forbidding the running of automobiles on county roads between sunset and sunrise was not unreasonable, held that the courts may assume to have what is common and current knowledge about the automobile. Part of such knowledge the court states as follows: "Its use as a vehicle for traveling is comparatively recent. It makes an unusual noise. It can be, and usually is, made to go on common roads at great velocity—at a speed many times greater than that of ordinary vehicles hauled by animals; and, beyond doubt, it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of people who travel on such roads in vehicles drawn by horses. Fearful accidents to persons driving animals, which are frightened into unmanageable terror by automobiles, are of common occurrence. And while there are usually laws regulating and limiting the speed at which they may be driven, it is a matter of common knowledge that these laws are frequently violated, and that it is exceedingly difficult for officers, even in the daytime, to stop them when going at forbidden speed, and arrest the drivers. And it is apparent that this would be much more difficult to do in the nighttime. Moreover, in the nighttime even those drivers of automobiles who might be considerate of the safety of others would not be able to see an approaching team in time to take the proper precautions."—Law Notes.

Carriers—Passengers—Shippers of Stock—Authority of Conductor—Waiver of Contract Provisions.

In Illinois Central R. R. v. Jennings, decided by the Supreme Court of Illinois in October, 1905 (75 N. E. 457), it was laid down that where a contract for the shipment of stock entitled the shipper to free transportation in the caboose, the conductor of the train had no implied authority, irrespective of circumstances, to invite the shipper to ride on the engine.

It was held that where a conductor had no express authority to waive a provision of a shipper's contract, or to invite persons to ride on the engine, the question whether the conductor's invitation to a shipper to ride on the engine was a waiver of the provision of the contract requiring him to ride in the caboose was one of fact for the jury.

It was further held that in order to establish a waiver by a conductor of such a provision in a contract, the shipper must affirmatively show, in the absence of evidence of express authority, that such action was within the apparent scope of the conductor's authority, and that the shipper did not know or have reasonable ground to believe that the conductor was exceeding his authority.

Master and Servant—Exemplary Damages as to Malicious Acts of Servants. — Exemplary damages can not be recovered for the malicious acts of railroad agents in failing or refusing to carry a passenger, where ratification is not shown. Townsend v. Texas & N. O. Ry. Co., Tex., 88 S. W. Rep. 302.

Certificate of Deposit—Indorsement—Bona Fide Indorsee—Notice.

Two certificates of deposit were drawn, payable, one to C., "trustee," and the other to C., "trustee of B. F." At the time they were wrongfully indorsed by the trustee in the same form, one of them had almost twelve months to run, and the other six months before maturity, and both drew interest to maturity only, and were not subject to check. *Held*, that the certificates themselves gave actual notice to the indorsee that the paper represented a trust fund, and obligated such indorsee to inquire into the right of the trustee to dispose of it, within Negotiable Instrument Law, sec. 56 (Acts 1898, p. 150, c. 94), providing that to constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. Ford v. Brown (Supreme Court of Tenn.), 88 S. W. Reports, 1036.

Carriers Who Are Passengers.

In Chicago & A. R. R. v. Walker, decided by the Supreme Court of Illinois in October, 1905 (75 N. E. 520), it was held that a railroad company must furnish a suitable waiting room for passengers and keep the same open for all regular trains and for trains which stop on signals, and that where a passenger on going to the depot finds it locked, she is not a trespasser if she enters the room, which is opened and lighted by one not an agent of the company.

It appeared that a passenger came to defendant's station at night with a ticket, and was admitted to the room by the village marshal, who unlocked the door for her, and that she was injured by falling through a hole in the waiting room floor, which had been there a long time. It was held that the question of defendant's negligence was for a jury.

Employer's Liability—Baltimore Fire.

The case of The Gans Salvage Company v. Byrnes, just decided by the Maryland Court of Appeals, is one of many that arose out of the great Baltimore fire of February, 1904. It appeared that after the fire the appellant company contracted to remove a quantity of canned goods from the cellar of a building destroyed by the fire. While the company was executing the contract, the appellee, who was in its employ, received injuries from the collapsing of a wall. He sued for damages on the ground that the appellant company put him in a dangerous position to work of which he had no knowledge. A judgment recovered by the appellee in the trial court was reversed on the ground that there was nothing to show what caused the walls to fall; that to all appearance they were safe, and that it could not be foreseen that the after half of the vault stack would tumble over.

Master and Servant—Safe Place to Work.—A master held not bound to furnish a servant a safe place to work, where the danger is temporary or arises from the hazard and progress of the work itself. Zeigenmeyer v. Charles Goetz Lime & Cement Co. (Mo.), 88 S. W. Rep. 139.

Digitized by Google

Compromise in the Jury Box.
[London Law Journal.]

Mr. Justice Jelf has found occasion in an action against the London Road Car Company to warn jurymen against the tendency to reach a verdict by compromise. "If one of you," said the learned judge in addressing the jury, "is of opinion that the company is not liable, and another that it is a case for heavy damages, do not settle the matter by awarding small damages. Such a practice, if resorted to by juries, would be disastrous to the administration of justice." That the practice does exist can not be denied. Here, for instance, are the concluding words of the *Times* report of another action for personal injuries tried before the Lord Chief Justice two or three days later: "After a considerable amount of conflicting evidence as to the way in which the accident happened, the jury, having considered the matter for an hour, sent to inquire whether the parties would accept a verdict of the majority. The parties did not agree to this course, and shortly afterwards the jury came into court with a verdict for the plaintiff for 450*l*." Some, no doubt, will be inclined to think that the interests of justice are better served by a compromise in the jury-box than by a disagreement. That was the abortive result of the action in which Mr. Justice Jelf gave his warning—an action, by the way, in which, a former jury having decided in the plaintiff's favor, the Court of Appeal had ordered a new trial. Surely, however, nobody can pretend that it is a satisfactory thing that a juror who is not convinced of the justice of a plaintiff's claim should agree to surrender his own opinion if his fellow jurors consent to reduce the damages they are prepared to give. It is opposed to the principle of unanimity in our system of trial by jury, and is calculated to weaken the feeling of conscientiousness with which the individual juror should discharge his duties. The disagreement of the jury may, no doubt, be a serious hardship upon the parties, but the surrender of conscientious opinions by dissentient jurymen is fraught with great mischief to the administration of justice as a whole. For the tendency to compromise in the jury box, so far as it exists, judges themselves are somewhat to blame. The dissentient juror has sometimes received but scant courtesy at their hands. "I hope you have made enough a fool of yourself. Now you can go," were the words which Mr. Justice Ridley deemed it proper to address to a dissentient juryman in a recent libel case at Exeter. If the necessity for unanimity works injustice, the remedy is simple—they who hold that view should openly seek its abolition.

Parental Liability for Children's Crime.

The parents of minors who commit crimes, whatever their moral responsibility may be, have not hitherto, at least in most jurisdictions, been held to any legal liability therefor. In New York, however, by chapter 655 of the Laws of 1905, such legal liability is created to a limited extent. If any parent or guardian of a child under sixteen years of age (except in the city of New York) omits to exercise due diligence in the control of such child to prevent violation of the law, such negligence constitutes a misdemeanor. Another provision makes it also a misdemeanor for any person to encourage or contribute to any violation of law by a child. This does not go so far as the Chinese law, by which in some instances it is said parents are executed for heinous crimes of a child, on the theory that, if they raise such a criminal they must take the consequences. This justice, if it be justice, is somewhat crude. But nothing can be reasonably said against the justice of the provisions of the New York law, which limit the liability of the parent or guardian to cases of neglect of the duty to use due diligence for the proper control of the child. The enforcement of this law will undoubtedly create a keener sense of responsibility on the part of some parents and guardians, and consequently prevent much juvenile crime. The law is so obviously just and useful that one may wonder that it was not long ago enacted. It may well be adopted in every state.—Case and Comment.

Master and Servant—Fellow Servants.—A fireman on a passenger engine held a fellow servant with the conductor of a passenger train approaching in an opposite direction, for whose negligence, resulting in the fireman's death, the railroad company was not liable. Crosby v. Lehigh Valley R. Co., U. S. C. C. of App., Second Circuit, 137 Fed. Rep. 765.

Accord and Satisfaction—Acceptance of Conditional Tender.—The acceptance by an employee of a check sent him in payment of wages at a certain rate, with directions to return it if the statement inclosed was not found correct, held an accord and satisfaction of the claim. United States Bobbin & Shuttle Co. v. Thissell, U. S. C. C. of App., First Circuit, 137 Fed. Rep. 1.

Carriers—Measure of Damages for Loss of Goods.—The measure of damages for loss of goods by a carrier is the value of the goods at destination, with interest from the time when the goods should have been delivered, less the unpaid costs of transportation. Chesapeake and O. Ry. Co. v. F. W. Stock & Sons (Va.), 51 S. E. Rep. 161.

Carriers—Negligence of Conductor.—Where the act of a conductor of a car in carrying a passenger by his stopping place in the darkness, etc., was the direct cause of his injury, it would be presumed that the conductor's act was within the scope of his authority. Indianapolis & E. Ry. Co. v. Barnes (Ind.), 74 N. E. Rep. 583.

Master and Servant—Fellow Servants.—Where plaintiff was injured by the negligence of another employee in running an engine against the one plaintiff was at work on, such employees were not fellow-servants. Mullin v. Northern Pac. Ry. Co. (Wash.), 80 Pac. Rep. 814.

Digitized by Google

Washington COLLEGE OF LAW

1328 NEW YORK AVENUE

REOPENS MONDAY, OCTOBER 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth st. N. W., on Monday, January 8, 1906, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 M. to 1 P. M.

H. RANDALL WEBB, *Secretary.*

Stockholders' Meeting (Annual).

OFFICE OF PUEBLO MINING COMPANY,
Rooms 710-711 Colorado Building,
WASHINGTON, D. C., November 29, 1905.

To the Stockholders of the Pueblo Mining Company.

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on **Tuesday, the 2d day of January, 1906, at 12 o'clock, noon,** for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on **Saturday, the 30th day of December, 1905, at 3 o'clock p. m., and will remain closed until Wednesday, the 3d day of January, 1906, at 10 o'clock a. m.**

[SEAL.] JNO. T. MCCOY, Secretary.

48-3t

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.

Lee Eugene Turner et al. v. Emily A. Moxley et al.

Equity No. 16,375.

Upon consideration of the report of the trustees, this day filed, it is by this court, this 23d day of November, 1905, ordered that the trustees be, and they are hereby, authorized to accept the offer of W. Riley Deeble for the purchase of the property known as Nos. 1117, 1119, and 1121 Thirtieth street northwest, located on the north 12½ feet of lot 188, and the south 24 feet of lot 186, in square 1196, in this city and District, for the sum of $2,750 cash, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the said purchaser or his assigns. Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and [Seal] The Washington Post before said final ratification. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. L. Williams, Asst. Clerk. 50-3t

Legal Notices.

Chas. W. Darr and R. A. Curtin, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

Estate of Mary E. Cook, Deceased.

No. 13,247. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Matthew E. Cook, it is ordered this 13th day of December, A. D. 1905, that notice be and hereby is given to **Thomas Hardesty, Reeze Hardesty, Georgiana Penn, Frank C. Farr, and Bowman Farr,** and to all others concerned, to appear in said court on **Monday, the 15th day of January, A. D. 1906, at 10 o'clock A. M.,** to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court 50-3t

Ellwood O. Wagenhorst, Solicitor

In the Supreme Court of the District of Columbia.

Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedian, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity, No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, **Susan E. Hedian,** cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D. 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, **Susan E. Hedian,** and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington [Seal] Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov. 10, 17, 24; dec. 1, 15; jan. 5, 12; feb. 2, 9

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.

William A. Gordon et al. v. William H. Collins et al.

Equity No. 25,185.

The object of this suit is to substitute new trustees under the will of William C. Hazel, deceased, for management of certain property in square 1256, in the city of Washington, in the District of Columbia. On motion of the complainants, it is, this 14th day of December, A. D. 1905, ordered that the defendants, **William Joseph Havenner, Mamie Gray, John Gray, Elizabeth M. Gray, and Jeanne Swart,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks. WEN- [Seal] DELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 50-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid forat more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Digitized by Google

Legal Notices.

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor having reported that he has sold premises No. 1617 Fourth street Northwest, Washington, District of Columbia, being lot numbered forty-eight (48) in square five hundred and twenty (520) according to Jesse D. Gibb's subdivision of part of square aforesaid, as recorded in Liber No. 20, folio 83, of the surveyor's office, District of Columbia, to George W. Ray, for twenty-six hundred ($2,600) dollars, all cash, less three (3%) per cent brokerage commission, it is by the court, this 12th day of December, 1905, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **12th day of January, 1906.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day.

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills. 50-3t

Hamilton & Colbert, Attorneys

In the Supreme Court of the District of Columbia,
Holding the Probate Court.
In re Estate of John J. Reilly, Deceased.
Administration. No. 9121.

On consideration of the report of Julia J. Byrne, administratrix, it is, this 12th day of December, 1905, ordered that the offer of William O'Mealey, to purchase the property known as lots 31 and 32, in block 6, Buena Vista Heights, in the county of Washington, D. C., for the sum of $800.00, payable in one-third cash and the balance in one and two years, with interest at 6%, said deferred payments to be secured by deed of trust upon the property sold, be, and the same is hereby, accepted, unless cause to the contrary be shown on or before the **12th day of January, 1906.** Provided a copy of this order be published once a week for three successive weeks before said date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 50-3t

[Seal]

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louis Meyer,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of December, 1905. MARIA MEYER, 1744 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,125. Administration. [Seal.] 50-3t

Hamilton & Colbert, Solicitors

Filed December 8, 1905. J. R. Young, Clerk.
In the Supreme Court of the District of Columbia,
Mary Clark et al. v. The District of Columbia et al.
No. 25,461. Equity Docket No. 56.

The object of this suit is to have set aside and declared null and void certain tax sales made by the District of Columbia to the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams,** of the property known and described as part of lots one (1) and twenty-one (21), in square 581, improved by premises No. 437 and 439 2d st. S. W., Washington, D. C., and lot 35, square 471, improved by No. 616 K st. S. W., and to have certain deeds, based upon said illegal tax sales, set aside and declared dull and void. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter. On motion of the complainant, it is, this 8th day of December, A. D. 1905, ordered that the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

Legal Notices.

John D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Marguerite M. O'Neill,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. HARRY H. NICHOLS, 509 O st. N. W.; JOHN D. COUGHLAN, 500 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,292. Administration. [Seal.] 50-3t

W. E. Ambrose, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Lucinda Bailey, Deceased.
Admn. No. 12,939.

Upon hearing the report of William E. Ambrose, administrator c. t. a. of Lucinda Bailey, deceased, stating that he has sold lot seven (7) in square one thousand and one (1001) to John Appich for the sum of eighteen hundred dollars ($1,800.00), it is, this 8th day of December, 1905, ordered, adjudged, and decreed that the said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **8th day of January, 1906.** Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter prior to said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 50-3t

[Seal]

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Carl L. Davis, Ralph P. Barnard, Trustee, Guy H. Johnson, Trustee, and Isadore T. Young, Complainants, v. Henry F. B. Pardon, and his Unknown Heirs, Alienees, and Devisees, Defendants. No. 25,759. In Equity, Docket 57.

The object of this suit is to reform a deed recorded in Liber J. A. S. 164, at folio 419, one of the land records of the District of Columbia, conveying part of lot numbered one (1), in square numbered seven hundred and ninety-three (793), improved by the dwelling No. 423 Fourth street southeast, in the city of Washington, District of Columbia, and to establish of record the title of the complainant thereto, subject to the deed of trust, as prayed for in the original bill in this suit. On motion of the complainant, it is by the court this 11th day of December, A. D. 1905, ordered that **Henry F. B. Pardon and his unknown heirs, alienees, and devisees** (if he be dead) cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order, good cause for shortening said period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-3t

[Seal]

J. Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia.

Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 14th day of December, A. D. 1905, ordered that said trustee be authorized to accept the offer of Mary J. Watkins to purchase at private sale for $2,541.78, lots fifteen (15) and sixteen (16), in block nine (9), of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed as reported, unless cause to the contrary be shown on or before the **14th day of January, A. D. 1906.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

[Seal]

Digitized by Google

Legal Notices.

Worthington, Heald & Frailey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth A. Pyne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. JOHN PYNE, 157 E. Ninety-fifth st., New York; HENRY R. PYNE, 106 E. Fifty-fifth st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,305. Admn. [Seal.] 50-3t

E. P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William E. Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. ELLWOOD P. MOREY, Wash. Loan and Trust Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,210. Administration. [Seal.] 50-3t

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Peter F. Hornig**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of December, 1905. JOHN G. HORNIG, 1020 B st. N. E.; GOTTFRIED HORNIG, 937 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,326. Administration. [Seal.] 50-3t

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Christian Sproesser**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1905. KATHARINA SPROESSER, 307 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,311. Administration. [Seal.] 50-3t

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Julia R. Balch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. WILLIAM C. BALCH, 903 O st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,293. Administration. [Seal.] 50-3t

Legal Notices.

SECOND INSERTION.

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Carl A. Lindquist**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 27th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of December, 1905. EDWIN B. HAY. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,457. Administration. [Seal.] 49-3t

Jos. A. Burkart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Frank B. Marlow**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. JOS. A. BURKART, 516 Corcoran Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,309. Administration. [Seal.] 49-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Celia E. V. Beall**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. LIZZIE B. GLADMON, care of Gordon & Gordon, 330 4½ st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,871. Admn. [Seal.] 49-3t

Lambert & Baker, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Daniel F. Shea**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. ANNIE E. SHEA, 1919 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,276. Administration. [Seal.] 49-3t

Filed December 7, 1905. J. R. Young, Clerk.

L. P. Harlow, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Violet Simpson, Complainant, v. Ollie Simpson, Ella Giesling, Defendants. Eq. No. 25,836. Doc. 57.

The object of this suit is to obtain an absolute divorce. On motion of the complainant it is this 7th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice.

[Seal]

A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Dec. 8-15-22

Digitized by Google

Legal Notices.

Jos. A. Burkhart, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Johanna Kennedy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**: otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. RICHARD A. O'BRIEN, 319 B St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,241. Administration. [Seal.] 49-3t

James F. Bundy and Geo. F. Collins, Solicitors

In the Supreme Court of the District of Columbia.
Howard Broadus, Complainant, v. Georgiana Broadus and Alphonso Waters, Defendants.
No. 24,903. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the grounds of adultery. On motion of the complainant, it is, this 29th day of November, A. D. 1905, ordered that the defendant, **Alphonso Waters**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, said order to be published in The Law Reporter and The Bee once a week for three weeks; otherwise the cause [Seal] will be proceeded with as in case of default. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 49-3t

Geo. E. Tralles and A. A. Birney, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ellen Larguey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1905. ELLEN KILROY, Oneida, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,310. Administration. [Seal.] 49-3t

George C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **August G. Romacker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. GEORGE P. ZURHORST, 301 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,318. Administration. [Seal.] 49-3t

Campbell Carrington, Solicitor

In the Supreme Court of the District of Columbia.
Mabel Huff, Complainant, v. Warren Rutledge Huff, Defendant, Clara De Marr, Co-respondent.
No. 25,658. Equity Docket No. 57.

The object of this suit is to obtain an absolute divorce upon the grounds of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this —— day of December, A. D. 1905, ordered that the defendant, **Warren Rutledge Huff**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the [Seal] cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. Dec. 8-15-22

Legal Notices

W. H. Robeson, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of James Smith, Deceased.
No. 11,789.
ORDER.

In the Supreme Court of the District of Columbia, holding a Probate Court: This cause coming on to be heard upon the petition of the administrator, and it appearing to the court that the administrator has appointed the **29th day of January, 1906**, for a meeting of persons entitled to distributive shares or legacies or a residue out of the estate of James Smith, the said action of the administrator in fixing said date is on this, the 1st day of December, 1905, hereby approved. And it further appearing to the court that all the heirs at law, next of kin, and distributees of the said James Smith, deceased, are non-residents of the District of Columbia, and so far as known to the said Samuel A. Putman, administrator, are named as follows: **Walter Harrington, Henry Harrington, Frank Harrington, John A. Smith, Martha Ann David, nee Woodworth, and Charles Woodworth.** And it further appearing to the court that the said Martha Ann David is a person of unsound mind and without committee or guardian, William H. Woodwell is hereby appointed a guardian ad litem for the purpose of the preservation of her interests in this proceeding, if any she have. It is further ordered that a copy of this order be mailed to said parties by said administrator by registered letter; and also that a copy of this order be published in The Washington Times and The Washington Law Reporter in each week [Seal] for four successive weeks, the last publication to be at least twenty days prior to said 29th day of January, 1906. WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 49-4t

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aretta G. Condict**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. FRANK G. CARPENTER, 1318 Vermont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,886. Administration. [Seal.] 49-3t

F. R. Keys, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
John H. Robinson v. Ella Robinson and George Mahoney, Co-respondent. Equity, No. 25,698.

On motion of plaintiff, by F. R. Keys, his solicitor, it is ordered that the defendant, **Ella Robinson**, and the co-respondent, **George Mahoney**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. Done this 3d day of November, 1905. By the Court. WENDELL P. [Seal] STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 49-3t

Berry & Minor and Hugh B. Rowland, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Van Ness Boynton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. HELEN AUGUSTA BOYNTON, care of Berry and Minor, 705 Colorado Bldg., Washington, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,008. Administration. [Seal.] 49-3t

Digitized by Google

Legal Notices.

John S. Alleman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James P. Wilson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. EMMA FLORENCE WILSON, 811 North Carolina ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,820. Administration. [Seal.] 49-8t

W. Russell Graham, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph S. Tucker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. DE WITT CLINTON L. TUCKER, 1320 K St., S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,212. Administration. [Seal.] 49-8t

D. W. Baker and Fountain Peyton, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William O. Holmes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. WALTER H. BROOKS, 1425 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,012. Administration. [Seal.] 49-8t

THIRD INSERTION.

John Paul Earnest, Solicitor
In the Supreme Court of the District of Columbia.
Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956. Docket No. 49.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 27th day of November, A. D. 1905, ordered that said trustee be authorized to accept the offer of Sue F. Chapman to purchase at private sale for twelve hundred dollars, lot 7, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lot be ratified and confirmed unless cause to the contrary be shown on or before the **27th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 48-3t

Joseph Salomon, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Edward T. Farrar**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Thursday, the 21st day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of November, 1905. LUTHER H. POSEY, by Joseph Salomon, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,515. Admn. [Seal.] 48-3t

Legal Notices.

J. J. Darlington, Solicitor
In the Supreme Court of the District of Columbia.
Alexander B. Hagner et al. v. John H. Walter, Trustee, et al. No. 25,589. Eq. Doc. 57.

ORDER.

The object of this suit is to perfect complainants' title to part of lot 13, square 141, beginning for same at the northeast corner of said lot 13, running thence south 133 feet, thence west 25 feet 3½ inches, thence north 133 feet, thence east 25 feet 3½ inches, to the place of beginning. On motion of complainants, it is, this 29th day of November, A. D. 1905, ordered that the defendants **James Westcott, Augustus Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innez Clark, ——Brown, —— Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks during the month following the first publication of this order, and twice a month during the ensuing month, and in The Washington Post twice a month for two months, good cause therefor having been shown. [Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. dec 1, 8, 15; jan 5, 12

Walter A. Johnston, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In re Estate of James F. Peerce, Deceased.
No. 13,288.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate and record of the last will of James F. Peerce and for letters testamentary, by Rebecca Delaney Hooe, as executrix, it is, this 28th day of November, A. D. 1905, ordered that **Thomas Hunter, Peerce Hunter, and Mrs. Lulu Hersperger**, heirs at law and next of kin of said James F. Peerce, and all others concerned, appear in said court on **Friday, the 29th day of December, 1905, at 10 o'clock A. M.**, and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star newspaper, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 48-3t

In the Supreme Court of the District of Columbia,
Hattie A. Mullican Byrnes et al., Complainants, v. Mary P. Brown et al., Defendants.
Equity No. 20,638. Docket 47.

Upon consideration of the report of A. A. Hoehling, Jr., and Blair Lee, trustees, herein filed, wherein it appears that said trustees have received certain offers of purchase, at private sale, of lot Q, square 133, City of Washington, District of Columbia, among others, an offer of John T. Knott, of $1.07 per square foot; terms, one-third (⅓) cash, balance in one year, with interest at five per centum (5%) per annum, secured by deed of trust, it is, thereupon, this 29th day of November, A. D. 1905, ordered that sale of said lot to John T. Knott, at the above price, be ratified and confirmed, unless cause to the contrary be shown on or before the **30th day of December, A. D. 1905.** Provided a copy of this order be published in The Washington Post and in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. [Seal] By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 48-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

J. D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Ellen W. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of November, 1905. DENNIS J. O'LEARY, 46 S st. N. W. JOHN D. COUGHLAN, 500 Fifth st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,291. Administration. [Seal.] 48-3t

Barnard & Johnson, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **George Washington**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **29th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of November, 1905. FRANK P. REESIDE, 1003 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,178. Administration. [Seal.] 48-3t

P. H. Marshall, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William H. Lee**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of November, 1905. MARY L. LEE, 1740 V st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,299. Administration. [Seal.] 48-3t

Jesse E. Potbury, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Emma M. Cutting**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **24th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of November, 1905. HARRY O. CUTTING, 1818 4th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,300, Administration. [Seal.] 48-3t

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to give notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Lucippia A. Jones**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **27th day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of November, 1905. EDWIN D. JONES, 409 B st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,196. Administration. [Seal.] 48-3t

Legal Notices.

FOURTH INSERTION.

Harry G. Kimball, Solicitor

In the Supreme Court of the District of Columbia.

Alice M. Peck, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Appelona Whitehair, Deceased, et al., Defendants.
In Equity. No. 25,782.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (103) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1905, ordered that the defendants, **the unknown heirs, alienees, and devisees of Appelona Whitehair**, deceased, and **the unknown heirs, alienees, and devisees of Justinian Mayberry**, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times.
[Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 12-19

George C. Gertman, Solicitor

In the Supreme Court of the District of Columbia.

The Atkinson and Ballard Company, a Corporation, Complainant, v. The Unknown Heirs and Devisees of Benjamin Stoddert et al., Defendants.
Equity. No. 25,714. Doc. 57.

The object of this suit is to obtain a decree perfecting and establishing of record the complete title of the complainant to lots numbered twenty-three (23) and twenty-four (24) in Lloyd P. Pumphrey's subdivision of certain lots in square numbered sixty (60), in the city of Washington, in said District, as described in the bill of complaint. On motion of the complainant, by George C. Gertman, its solicitor, it is by the court, this 9th day of November, 1905, ordered that the defendants, the unknown heirs and devisees of Benjamin Stoddert; George Scott, executor, and in his own right; Jonathan Scholfield (of Issacker), executor, and in his own right; Mahlon Scholfield; Benjamin Waters, trustee, and in his own right; Sarah Talbot, Ann Dobey, John Balderson, Eliza Cowen, Lucretia Edmonston, John Woods, Rachael A. Levering, Joseph Scholfield, Hannah Scholfield, Sarah Scholfield, Lewis Scholfield, William Scholfield (of Mahlon); Elizabeth Hopkins, Rachael Hodge, Ann Scholfield, Thomas Scholfield, Andrew Scholfield, William Scholfield (of Issacker); Martha Stanton, James Stanton, Jane Anderson, Sarah Anderson, Mary Anderson, William Elliott, Joseph Elliott, Sarah Elliott, Margaret Elliott, Maria Elliott, Thomas Elliott, Mary Elliott, James Evans. (of Jonathan); John Evans (of Theophilus); George Evans, Cadwallader Evans, Oliver Evans (of Oliver); John Lampley, Elizabeth Lampley, Eliza W. Evans, Rachel Evans, Leah Evans, Thomas Evans, Evan Evans, Jesse Evans, Oliver Evans (of Joseph); Abner Evans, George Evans, Joseph Evans, Joseph Ball, William Brackin, Adeline Brackin, Elizabeth Brackin, Margaret Brackin, and Minnie Johnson, or if either or all of them be dead, then the unknown heirs and devisees of any or all of the above-named defendants, cause their appearance to be entered herein on or before the first rule day occurring forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order, otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once in November and three times weekly in December, 1905, prior to said return day, good cause having been shown by the bill and affidavit filed herein, to the satisfaction of the court, that further or longer publication
[Seal] is unnecessary. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. nov. 10; dec. 1, 8, 15

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 51

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - DECEMBER 22, 1905

CONTENTS.

Editorial 801
In Memoriam—Justice Andrew Wylie 803
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
Henry U. Rheam et al., appellants, v. James W. Martin 807
Legal Notices 811

Married Women—Mortgage of Separate Property for Debt of Husband—Secs. 1154, 1155, Code D. C., Construed.

A decision of especial importance, construing sections 1154-1155 of the Code of this District, was rendered during this week by Mr. Justice Stafford, holding Equity Court No. 2. The case is that of Darneille v. Tuck et al., and was brought to secure an injunction against the sale of property of the complainant, a married woman, under a deed of trust executed by herself and husband to secure a note for $19,000, and ten interest notes of $570 each, and being the joint and several notes of herself and husband. It appeared that of the sum of $19,000 loaned by one of the defendants $1,226.96 was used to discharge an indebtedness due from the husband to the lender of the money, and that the balance was used in paying off a prior incumbrance on the property, expenses, commissions, etc. So far as the portion of the loan applied in payment of the debt of the husband is concerned the position of the complainant was concededly that of a surety; and it was contended on her behalf that, by virtue of sections 1154 and 1155 of the Code she was incompetent to bind herself as surety for her husband or to charge her real estate by way of mortgage given to secure the debt of her husband. On behalf of the defendant it was contended that, even if the complainant may not be personally bound by the note given for the debt, although signed by herself and husband jointly, yet that the deed of trust given to secure the obligation of her husband upon such a note is valid, notwithstanding it was given upon property which is held to the sole and separate use of the wife. The question presented was, therefore, whether the broad power of disposition of property given the wife by section 1154 is limited in its operation by the proviso to section 1155, in which it is declared "that no married woman shall have power to make any contract as surety or guarantor, or as accommodation drawer, acceptor, maker, or indorser." Mr. Justice Stafford held, in construing these sections, that the proviso is limited in its operation to the section in which it occurs, i. e., section 1155. In reaching this conclusion Mr. Justice Stafford said in part:

"In order to understand what effect the statute was intended to have we must look at the situation as it existed before the enactment of any statute enlarging the powers of married women. The contracts of married women made with reference to their separate estate and upon its faith and credit were enforced in equity against such estate. Where a statute declared that all her property should be held to her sole and separate use as if she were unmarried, equity still retained its jurisdiction to enforce her contracts against it unless the statute also provided that she might be sued at law. But where the statute did so provide she was no longer liable in equity, but was liable at law only. Pomeroy's Eq. Jur., sec. 1125; Emmons v. Harlan, 5 Mack. 521. The statute we are dealing with declares (sec. 1154) that all property of a married woman shall be held to her separate use and be subject to her disposal as if she were unmarried; but it also declares (sec. 1155) in what cases she may make contracts, and that in such cases she binds herself at law and may be sued and her property taken on execution. Her property is no longer liable in equity because, if liable at all, it is liable at law, that is, by virtue of section 1155. It is section 1155 which limits and defines her power to contract, so as to bind herself and her property; the only limitation relates to her contracts as surety, etc. But her power to dispose of her property, wholly or in part, absolutely or upon condition, is entirely separate and distinct, and is conferred by section 1154. By this section no change is made in the law as it existed without legislation, except that now all her property is in her power, whereas formerly only that part which had been conveyed strictly to her separate use was so held. If the legislature had intended to take away from her the power she already possessed to dispose of her property by mortgage, it is probable they would have adopted some other method than this method of a proviso to a section relating to a different matter. Full effect seems to be given to the proviso when it is recognized as limiting her power to contract liabilities enforceable by action and execution at law. It can hardly be held that the legislature intended to prevent her disposition of her property, conditionally, when it gave her power to do so absolutely. It is conceded that she might have conveyed her property in payment and extinguishment of her husband's debt.

"By this construction we limit the operation of the proviso to the section in which it occurs,

Digitized by Google

which is the natural and ordinary way of reading it."

The entire opinion is full of interest and importance, and will be reported in full in a subsequent issue. Mr. L. A. Bailey appeared for the complainant, and Messrs. Gordon & Gordon for the defendants.

Opening of Minor Street—Requisite that Public Interests Require it—Legislative Valuation of Benefits.

In Handley v. Macfarland et al., recently decided by Mr. Justice Stafford, holding Equity Court No. 2, the suit was by the owner of a lot in square 700 in this city, in which proceedings were recently had for the opening of a minor street, to enjoin the enforcement of an assessment made against her lot, for discovery, and for other purposes. The bill alleged that it was not for the public interest that the street should be opened, and that it was not the judgment of the Commissioners that the public interests required it; that the financial interests of certain lot owners alone required it; that nevertheless the Commissioners went through the form of adjudging that the public interests required it, and entered a certificate to that effect upon their records; but it was contended that this certificate was false in fact and not an exercise of judgment, in other words, that the Commissioners acted in bad faith. The Commissioners demurred to the bill. It was held that, under section 1608 of the Code, the judgment of the Commissioners that public interests require the opening of a minor street is an indispensable prerequisite to every proceeding that may be taken to that end, and that the allegation of the bill that the Commissioners acted in bad faith and without the exercise of judgment was admitted by the demurrer for the purposes thereof, and that the proceedings were therefore void from their inception.

It was also contended by the plaintiff that the assessment against her property was greatly in excess of the special benefits received, and that sections 1608–1613 of the Code, in authorizing an assessment in excess of such benefits, were unconstitutional in depriving an owner of his property without just compensation. The court holds that this question is not an open one, in view of the recent decision of the Court of Appeals in Brandenburg v. District of Columbia, 33 Wash. Law Rep. 740, in which the same objections urged against the validity of the statute were held untenable, the court affirming the power of Congress to pass a general act for opening such streets, and declare the property benefited to be that within the block, and that the cost of the improvement should be borne by the owners of such property, and that this was what Congress had done in the act complained—in other words, that the act constituted a legislative valuation of the special benefits. The legislature having the power to put a valuation upon the benefits in advance, and having exercised that power, it can not be said that complainants' property is being taken without due process of law.

The opinion of Mr. Justice Stafford is full of interest, and will repay a perusal. We hope at an early day to place it in full before our readers.

Theater Tickets.

In Collister v. Hayman, decided December 5, 1905, by the Court of Appeals of New York, it is held that the proprietor of a theater may print a condition on tickets of admission to the effect that, if sold on the sidewalk, they will be refused at the door, and may enforce such condition. A theater, though licensed, is not operated under a franchise, and the proprietor may impose reasonable conditions for the protection of his patrons, with respect to the transfer of tickets, and may notify people who are about to purchase them on the sidewalk that they will be refused at the door. Such a condition, attached to the sale of tickets, applying to all classes and persons alike, is not violative of the statute against discrimination, in places of amusement, on account of race, color, or creed.

Commenting on the decision, the New York Law Journal says:

The unanimous decision of the New York Court of Appeals in Collister v. Hayman, reported on the first page today, is of great interest and importance, not so much because of the practical result—which is similar to that reached in the court below and by other courts of this State in former cases—but because of the grounds given for the present determination and the general reasoning of the opinion. It is held that the proprietor of a theater may refuse admission to persons procuring tickets from sidewalk speculators and, therefore, that the action, which was to restrain such a proprietor from interfering with the business of a licensed theater ticket speculator, must be dismissed.

The Appellate Division, 71 App. Div. 316, affirmed an order denying an injunction pendente lite, assigning as its principal ground that "the weight of authority is to the effect that a theater ticket is merely a license given by the proprietor of the place of entertainment to the purchaser of that ticket to enter upon the premises of such proprietor to witness a performance, and that in its nature it is a revocable license." The Appellate Division cites as leading authority Wood v. Leadbitter, 13 M. & W. 838. It also states that courts of other jurisdictions have taken different views of a theater ticket from those expressed by Baron Alderson in the Leadbitter case, but shows that the courts of New York have quite uniformly followed them.

Practically all of the cases on this subject that have been reported up to the present time

Digitized by Google

dealt with the right to exclude objectionable persons or persons who had procured tickets through objectionable means. In promoting that desirable end the courts have not been properly regardful of the wide reaching effects that might follow from the general rules laid down. The present decision is to be commended, because, although the actual controversy related to the control of objectionable features, the Court of Appeals has quite substantially revised the abstract views formerly obtaining. There is really no theoretical justification for holding that a theater ticket is a mere personal license, and as such arbitrarily revocable. The purchase of a theater ticket is a contract, and no amount of casuistry can make it anything but a contract. The Court of Appeals recognizes this truth by treating the relation between proprietor and ticket purchaser throughout as a contractual one. The term "license" is used, but the court says that "the ticket is a license, issued by the proprietor pursuant to the contract as convenient evidence of the right of the holder to admission to the theater at the day named, with the privilege specified." The court then goes on to validate the exclusion of holders of tickets obtained from certain speculators on the logical ground that by printing on the ticket a notice that tickets purchased on the sidewalk will be refused, such proviso is made a condition of the contract of purchase, and, being a reasonable condition, may be enforced. The result is salutary in recognizing, as formerly, certain rights in theater proprietors to regulate the manner of sale of tickets, and abstract principles of law are at the same time set right.

As to the authority of the Tyroler case (157 N. Y. 116), it may be said that the Court of Appeals of New York (by a bare majority vote) is the only court in the Union to our knowledge that has held even the transportation tickets of common carriers independent articles of property, and that a statute enabling the carriers to limit the sale of their tickets to specially authorized agents is unconstitutional. The weight of authority throughout the Union very decidedly supports the view that transportation tickets are mere incidents of the contract of carriage, and that it is competent to authorize reasonable regulation of the sale thereof for the benefit of the public and the carriers themselves. Having taken such an exceptional position, the Court of Appeals does well in the present case to limit the application of its decision to a case where statutory prohibition of ticket brokerage is concerned and not to extend it to cases where certain disabilities as to sale are imposed as conditions of the contract.

The whole gist of the present decision is an assertion and vindication of contractual rights. On this theory proprietors of theaters may impose any restrictions upon the sale of tickets which constitute reasonable conditions. On the other hand, it would seem that a person purchasing a ticket without the violation of any restriction or condition would be entitled to ordinary contractual rights against the proprietor of the theater.

Justice blanks of every description for sale at this office.

In Memoriam.

JUSTICE ANDREW WYLIE.

At the meeting of the Bar of the District, held on the afternoon of November 3, 1905, to pay tribute to the memory of the late Justice Andrew Wylie, Justice Alexander B. Hagner presided, and in taking the chair spoke as follows:

Gentlemen: No one could sympathize more fully than I do with the purpose of this meeting.

Although there are some members of our bar who knew Justice Wylie longer than I did, yet I am the only survivor of his colleagues of the bench; and during a good many of the twenty-two years of his service, I was intimately associated with him, officially and socially.

I have no intention of detaining you with a consideration of his merits as a judge and a man. These will be appropriately presented by the gentlemen who are to address the meeting. But standing in this chamber, associated with so many reminiscences of our friend, I may be excused for saying a few words.

My first appearance after my appointment, in an official capacity, was in this room, at the hearing of an important cause in the general term, in which Justice Wylie participated.

Very shortly afterwards, resolutions passed at a meeting of the bar expressive of its regret at the death of Justice Olin, whom I succeeded on the bench, were presented to the general term in this same room by Justice Wylie, at the request of the bar.

My acquaintance with him, commencing thus early in my experience on the bench, was of the most agreeable character, and from this beginning until his death, it continued uninterrupted in the slightest degree.

When Justice Wylie resigned his commission in 1885, the members of the bar passed resolutions expressing their high sense of his merits as a man and judge, and commending his administration of his office, which are published in one of the volumes of our reports. At the conclusion of one of them, there was an expression of the hope that his life of labor might be crowned by a prolonged age. If the words were intended as a prayer, they seem to have been answered as such, for that life was prolonged for more than twenty years, without decay of mental or physical powers. One is reminded of the words of the poet—

> "More things are wrought by prayer
> Than this world dreams of."

Living forty-two years after his appointment to the judgeship, he attained the unusual age of 91 years.

The death of an honored judge at such an age reminds one of the incident in the life of the venerable judge, Samuel, when he called the people around him and demanded them to witness against him: "Whose ox have I taken? or who have I defrauded or wronged? or at whose hands have I taken a bribe?" And of their reply, which we can likewise make here: "Thou hast done none of these things."

The following named gentlemen were ap-

Digitized by Google

pointed a committee to prepare appropriate resolutions: Mr. Nathaniel Wilson, Mr. James G. Payne, Mr. Wm. F. Mattingly, Mr. R. Ross Perry, Mr. Henry E. Davis, and Mr. A. S. Worthington. The committee presented the following report, which was read by Mr. Mattingly, at the request of the chairman, Mr. Wilson:

Andrew Wylie, born at Connorsburg, in the State of Pennsylvania, on the 25th day of February, 1814, and a justice of the Supreme Court of the District of Columbia from March 18, 1863, to May 1, 1885, when he put aside his judicial duties for the rest to which his long, faithful, and distinguished service of more than twenty-two years had justly entitled him, died at the city of Washington, District of Columbia, on the 1st day of August, 1905, in the ninety-second year of his age. On his retirement, the bar of the District of Columbia appropriately expressed its appreciation of his career and services in resolutions which are recorded for a perpetual memorial in the minutes of the court of which he was so long a member and an ornament. The hope of the bar, then expressed, that he might in his retirement enjoy the honorable ease which his career foreshadowed has been abundantly realized, and his fellow-lawyers who extended to him that hope are now met to record their gratification and pride in its justification.

Coming to the bench in the midst of the historic strife which brought this court into being, he met its requirements with a fidelity, industry, and zeal that wrought their natural results, and carried with them their own reward, that of a just appreciation of faithful and fearless duty at all times, unhesitatingly met and fully discharged. The years following his retirement from service have approved the judgment which that service demanded and received, and we now supplement our record of twenty years ago with the expression of our glad conviction that what we then said was an under-statement rather than eulogy of the virtues of which we spoke our recognition.

This minute will be presented to the court of which he was so long a member, with the request that it be placed among its records, and will be communicated to his family, in expression of our gratitude for his services and of our respect and admiration of him as man and public servant.

Mr. NATHANIEL WILSON said: Mr. Chairman, I was admitted to the bar of the old Circuit Court of the District of Columbia in February, 1861. Judge Wylie was then a member of that bar, and had been for several years practicing law in Washington, although residing in Alexandria. He had recently become a resident of Washington.

I came from the first into intimate relations with Judge Wylie, and those relations soon ripened into a friendship that continued through his life.

I had special opportunity to observe from its beginning what came to be a notable judicial career.

Early in the year 1863, Judge Wylie was appointed by President Lincoln to fill a vacancy on the bench of the Criminal Court of the District, occasioned by the death in January of that year of the Honorable Thomas H. Crawford, but he did not enter upon his duties in that court.

There was then pending in Congress a measure vitally affecting the entire judicial system of the District and the tenure of office of its judges.

War against the lawful authority of the Government being then flagrant and waged at the very gates of the capital, and as the issues of the war involved the fundamental principles of constitutional liberty, right, and obligation, it was considered that judicial authority at the seat of Government should be held and exercised only by those who had clear and unequivocal opinions as to the paramount authority of the Government and as to its power and duty to put down the rebellion and to preserve the integrity of the Union.

There was strong hostility towards and mistrust of all who had been identified with the old order of things, or with parties and policies that had brought about the conditions which then seemed to threaten the destruction of the Republic.

The excited condition of the public mind made it easy to obtain quick and radical legislation that promised protection against threatened dangers, and on the 3d of March, 1863, the act of Congress was passed which provided for the immediate reorganization of the courts of the District, and for the appointment of four justices (one of them to be designated Chief Justice) in whom judicial power was to be vested.

Thus in a moment the judicial system which had been so long in force in the District was completely destroyed, and the able and distinguished judges, who had constituted the Circuit Court of the District, Judge Dunlop, Judge Morsell and Judge Merrick, were in effect deposed.

It is due to the memory of these eminent jurists—able, learned, and of spotless character—to say that neither then, nor at any subsequent time, was any word or act revealed that indicated conduct or opinions on their part inconsistent with the truest loyalty and allegiance to the Government.

Soon after the act referred to went into effect, President Lincoln, on the 18th day of March, 1863, appointed Judge Wylie one of the justices of the new court, and at the same time appointed David K. Cartter, Abram B. Olin, and George P. Fisher, justices, naming Judge Cartter Chief Justice.

The first meeting of the court was held in the Circuit Court room of the City Hall on the 23d day of March, 1863, at which time Judge Wylie took his seat on the bench, where he continued in the uninterrupted discharge of his judicial duties until he retired on the first day of May, 1885.

Of the four justices so appointed, Judge Wylie was the only one then a resident of the District, and the only one who was a member of the District Bar.

Judge Cartter was a resident of Ohio, Judge Olin of New York, and Judge Fisher of Delaware.

The selection of Judge Wylie, at such a critical time, for this important judicial position at the capital of the nation, was in consequence of

Digitized by Google

the personal knowledge President Lincoln had of Judge Wylie's lineage, of his education, of the history of his professional life and acquirements, and also of certain events which had then lately transpired, which demonstrated in a conspicuous way the possession by him of elements of character of inestimable importance and value in the emergencies that then existed and in the great crisis that was then impending.

Judge Wylie was born on the 25th day of February, 1814, at Connorsburg, Pa., where his father, Andrew Wylie, of Scotch-Irish descent, a man of great learning and force of character, was the president of the Washington University.

In 1828 his father removed to Indiana and became president of the University of Indiana, where Judge Wylie graduated in 1832.

From the university he was sent to the law school at Lexington, Kentucky, and there graduated in 1837.

Thence he went to Pittsburg, Pa., and entered the office of Walter Forwood, a distinguished lawyer and his father's friend.

He commenced there the practice of law, and was at one time district attorney.

While so occupied he married, in 1845, Miss Mary Caroline Bryan, of Alexandria, Va., an accomplished woman, of exquisite loveliness of character and person, whose lamented death, in 1897, took from his life its chief source of happiness.

He continued his residence in Pittsburg until the calamity known as the "Pittsburg Fire" occurred, and made a change in his plans necessary.

He removed with his wife to Alexandria, and there took up his residence with his wife's family.

As the time for the presidential election of 1860 drew near, the tremendous antagonisms that were to be developed by the impending conflict between the North and the South, and the intolerance and enmity with which all adherents in the South to the cause of the Union would be regarded, became apparent. Judge Wylie was, as his father had been, unalterably opposed to the institution of slavery. While he took no active part in politics, he made no concealment of his views and purposes, and he gave it to be plainly understood that he intended to vote for the Lincoln electors.

Threats were made that if he appeared at the polls he would be shot; and when he did appear, pistols were drawn and thrust against his person, but were not fired.

He cast his ballot, and his was the only one cast that day for the Republican electoral ticket in the city of Alexandria. A most significant act!

After the day of election, and while sitting at home on the porch of his house, he was fired at, and a rifle ball struck and broke the glass that was in his hand.

A few days afterward he moved to Washington, where he established his residence on Four-and-a-half street near the City Hall. Within a few months he moved to a house that he purchased on N street N. W., between Thirteenth and Fourteenth streets N. W., where he lived until he purchased and occupied the home on Thomas Circle, where he resided until his death, which occurred on the first day of August, 1905.

It has seldom happened that any one has entered upon high judicial position more completely equipped for the performance of his duties than was Judge Wylie.

He had received the instructions of the university and the law school; he had spent years in the office of a great lawyer; he had the experience acquired in his own practice; he was in the full vigor of life, strong in body and in mind, and with infinite capacity for labor. More important than his acquirements were his deep religious convictions, his controlling sense of duty, his unfaltering and intrepid courage, which formed the foundation of his character.

Seldom have the promises of the morning been more completely fulfilled and satisfied by the achievements of the day.

When, after twenty-two years of unremitting labor, he left the bench, his success in the administration of justice during that long period received well-merited recognition, and the unqualified approval and unstinted commendation of the bar and of the community.

The records of this court contain abundant proofs of the industry, learning, sagacity, and uncommon mental vigor which he applied to the disposition of litigation.

Being familiar with the amount and variety of the business that Judge Wylie was obliged to consider during the first years of his service, and the multitude of prize, confiscation, revenue, and other cases, criminal as well as civil, in which the Government was concerned, I soon had occasion to observe the complete control which he at once took of the proceedings of his court, the firm grasp in which he held the details of every case, his speedy decision when the moment for decision arrived. Thus the accumulation of unfinished business and unnecessary delay was prevented, and abundant opportunity secured for careful and adequate consideration of whatever matter or question was of real gravity and importance.

I wondered at first what was the explanation or source of this singular administrative power, apparent from the first moment he sat upon the bench, and the effects of which were so plain and so plainly useful.

About the same time, that is, within a few months after his appointment, I noticed, or thought I noticed, in Judge Wylie's demeanor, a certain reserve that was not inconsistent with the intimacy of friendship, but yet indicative of changed relations and some alien interest.

The explanation came one evening, after the conclusion of a famous trial, when, in a few words of half soliloquy, Judge Wylie spoke of the awful burden and responsibility that rested upon the man appointed to sit in judgment upon the lives and rights of others, and of the inevitable isolation of the judgment-seat.

These, he said, are the hard conditions that belong to the service performed by judges, but if that service were not performed, justice would perish from the earth.

I realized then with what gravity and solemnity his duties seemed to him to be invested, and with what absolute sincerity and completeness he had dedicated himself to their performance.

The times were serious indeed. The streets

Digitized by Google

were full of soldiers. The noises that came in through the windows of this building were the noises of a camp and not of a city.

"Everywhere the crimson flower of battle bloomed,
And solemn marches filled the night."

In the midst of the turmoil and gloom, his thoughts and interests were centered in the court-house, in his home, and in the stated services of his church. He was absorbed in and consecrated to the business of his court, and gave to its dispatch unremitting and anxious study and attention.

As month after month, and year after year, went by, the independence of his judgment, the vigor of his understanding, the extent and quality of his learning, his vindications of the rights of the citizen and the supremacy of the civil law, his hot indignation against wrong and swift condemnation of the wrongdoer, manifested in his decisions and opinions, received increasing commendation and respect, and when he left the bench he was recognized and will long be remembered as one of the great and heroic judges of the land, whose labors and whose character have given increased security and stability to the independence of the judiciary and to the liberty of the citizen.

Judge Wylie was on terms of social and friendly intimacy not only with President Lincoln, but with the members of his Cabinet, particularly with Secretary Stanton.

He was deeply concerned for the triumph of the armies of the Union, and for the welfare of those who were charged with the conduct of the war.

The great tragedies that occurred in Washington, almost within his sight, almost within his hearing, the great currents that had swept away and wrecked so many landmarks, so many old associates and friends, made deep impressions upon his mind and upon his heart.

Life afterwards seemed to have lost importance, or rather to have acquired a different importance. His attitude towards the world seemed that of one who had striven with all his might to accomplish that which he was set to do, who had escaped great dangers, who had seen great disasters, but who looked towards the future with serene and untroubled vision, and with calm and confident expectation of a higher life.

It was his good fortune to continue to the last in the home which had been his dwelling-place for more than a generation; the home of his wife until her death, the home of his children and grandchildren, surrounded by his books of history chiefly, in which he was interested to the last, and by the many things that had come to have a sort of personality through long and familiar use.

His was a strong, courageous, manly soul, endowed with great capacity; a clear-headed and a clear-hearted judge, doing justice, giving right judgments, so far as by striving he could find the right; an humble Christian, unafraid to enter upon the realities of the unseen world.

In honoring him, in cherishing with gratitude his memory and his services, we do but honor that which of all things in the world is most worthy of imperishable honor—a just and upright judge.

Mr. JAMES G. PAYNE: Mr. Chairman, the Supreme Court of the District of Columbia was born to being in the midst of the civil war, the war in which the nation was struggling for its united existence. Ending two years after the birth of the court, its shadows still lingered and hung low, and its influences left behind permeated the halls of justice as well as the halls of Congress. It was amid such surroundings that Judge Wylie began the discharge of the duties to which his appointment as justice of that court called him. I came to the bar four years after the creation of the court, something more than four years, and from that time until Judge Wylie's death I enjoyed the good fortune of his acquaintance, both professionally, in the relative attitudes of lawyer and judge, and personally, in our social relations. I came to know him well, and, like all others who were his contemporaries of that day, especially I learned to appreciate the talents which gave him his standing and reputation as a jurist equal to that of any other in American history. It is no disparagement of his colleagues on the bench to say that Judge Wylie was eminently fitted for the position he held; a man of deliberate judgment, who measured with care the proof and the argument and the merits of the case, and who saw but one thing at the end of his consideration, to do justice and equity to all who were interested. He was especially fitted for the work of the equity branch of this court, and to that he was assigned more than either of his colleagues. My recollection is that he held the equity court almost continually during several years of his judicial career.

Little can be added to what has been so well said by my brother Wilson in presenting the memorial prepared by the committee, and I can only say in conclusion that the bar of this court, and especially the elder portion of it, can never forget Judge Wylie. With all the severity of the judge, and yet all the kindness of a man, his treatment of the bar was of that nature. He was not only exact in requiring the duty and the service of the bar in their conduct of cases, but he was considerate of the younger members of the bar, beginning the practice of the law, leading them onward, until they thought as much of him as did their elders, his compeers.

I move, Mr. Chairman, the adoption of the memorial.

The resolutions were unanimously adopted and the meeting adjourned.

Carriers—Injury to Licensee on Track.—Where defendant railroad company had knowingly permitted the public to use its track within the limits of a city as a walkway for a number of years, a person so using the track was a licensee, and not a trespasser. Gulf, C. & S. F. Ry. Co. v. Matthews (Tex.), 88 S. W. Rep. 192.

Principal and Agent—Undisclosed Principal.—In an action against an agent of an undisclosed principal and the principal, evidence held admissible and sufficient to make out a case against both the agent and principal. Pittsburg Plate Glass Co. v. Roquemore, Tex., 88 S. W. Rep. 449.

Digitized by Google

Court of Appeals of the District of Columbia.

HENRY U. RHEAM ET AL, APPELLANTS, v. JAMES W. MARTIN.

HUSBAND AND WIFE; AGENCY; BUILDING CONTRACT, CONSTRUCTION OF; INDEPENDENT CONTRACTOR; DIRECTING VERDICT.

1. Agency of the husband for the wife can not be implied from the marriage relation subsisting between them, nor from the fact that he may have undertaken an enterprise with a view to her benefit also.
2. Where real estate is owned jointly by husband and wife, the husband may enter into a contract for the erection of a house thereon without thereby bringing the wife under a legal obligation; and it is incumbent upon the other contracting party, if not satisfied with the husband's responsibility, to secure that of the wife in some way recognized by law.
3. When a contract is in writing, it is for the court to declare its meaning and legal effect, when requested so to do, and not leave it for the determination of the jury.
4. In an action against husband and wife for work and materials furnished in the erection of a house on a lot belonging to both, there was no evidence that the wife had any connection with the contract. Plaintiff's contract was with one P, who had a contract with the husband for the erection of the house; but plaintiff sought to show that the latter contract was a mere form, that P was not an independent contractor, but superintendent for the husband, who was doing the work himself. *Held*, upon a review of the evidence, that the plaintiff had failed to establish his contention, and that the trial court erred in not directing a verdict in favor of both defendants.

No. 1566. Decided November 8, 1905.

APPEAL by defendants from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,082, entered upon the verdict of a jury in an action against husband and wife. Reversed.

Mr. Wharton E. Lester for the appellants.

Mr. Joseph A. Burkart and *Mr. J. Altheus Johnson* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action of assumpsit begun by James W. Martin against Henry U. Rheam and his wife, Julia A. Rheam, to recover the sum of $355 for work done and materials furnished in the erection of a house for the defendants.

It appears that the lot upon which the house had been erected belonged to the two defendants. Plaintiff testified substantially as follows: That Henry Rheam got an estimate from him for the brickwork of the house which amounted to $600, which was afterwards reduced to $575. That afterwards plaintiff heard that W. S. Plager was going to build the house, and Rheam told him to see Plager and give him an estimate. That he did so, adding $20 for an extra chimney wanted by Mrs. Rheam. That he finished the brickwork, for which he received from Rheam $75 on July 3, and $150 on July 11, 1903. That he could not get the remainder of his money and asked Rheam for it. That Rheam said, "I will stand good for it; you finish your work and get an order and I will pay you." (This was objected to by the defendants as irrelevant, that there was no consideration for the promise, and that it was not in writing.) Witness further said that Rheam was around half the time during the progress of the work and did nothing but give orders. That Rheam gave him no orders directly, but complained to him about not wetting the bricks properly. That he knew Rheam had given the job of building the house to Plager. At request of plaintiff, defendant produced the following writing, addressed by Plager & Co. to H. U. Rheam, and read it in evidence:

"WASHINGTON, D. C., June 8, 1903.

Mr. H. U. Rheam to W. S. Plager, Architect and Builder (Licensed), 708 F street, N. E.

DEAR SIR: I agree to furnish all labor and material to erect and complete one three-story brick dwelling at No. 644 C street, N. E., as per plans and specifications, using chestnut trimmings, doors, etc., for the sum of two thousand three hundred and fifty dollars ($2,350.00). All work to be done in a first-class manner.

Yours truly, PLAGER & Co.

Owner to furnish party walls."

On cross-examination plaintiff said that he knew Rheam had first obtained estimates from several material men, with a view to erecting the house himself. That afterwards he changed his mind and offered the plans and specifications to several contractors for bids. That he gave the contract for building the house to Plager. That he told plaintiff to see Plager and give him his estimate for the brickwork, and the job would be his. That he thereafter saw Plager and gave him the following written bid:

"WASHINGTON, D. C., June 24, 1903.

Mr. Plager to J. W. Martin, Dr., Bricklayer and Contractor, 224 Seventh street, N. E. Jobbing promptly attended to.

I propose to do brickwork on house between 6 and 7th, on C st., N. E., according to plans and specifications prepared by you, for the sum of $575.00, in addition to chimney in rear for the extra sum of $20—$595.

JAMES W. MARTIN.

I agree to pay the same.—W. S. PLAGER."

Plaintiff then further testified that the last line was written and signed by Plager after his work had been completed. That Rheam paid him the sums credited, and that the two receipts, of July 3 for $75 and of July 11 for $150, were for money paid by Rheam, though they read as though received from Plager. That he paid no attention to the name in the receipts. That not being able to collect the balance due him he authorized his attorney to write to Rheam on August 21, 1903. This letter notified Rheam that the work had been completed "according to his contract with Mr. Plager," and unless his claim be settled he would file suit to enforce a lien. It was admitted that plaintiff had filed a mechanic's lien on August 18, 1903. This notice recited the property and the balance due, and concluded in these words: "Being amount due to me for labor upon and materials furnished for the construction of said building under and by virtue of a contract with William S. Plager, original contractor with owner."

W. S. Plager, called as a witness by the plaintiff, testified that he did business alone, under the name of W. S. Plager & Co., as an architect and builder, and had drawn the plans and specifications for the house of the defendants; that Rheam first intended to erect the house himself and get estimates; that afterwards witness made a bid for the entire construction, except party walls, which has been set out above;

Digitized by Google

that other contractors made bids also; that Rheam accepted his bid; that witness was to furnish everything needed for the building, and began operations in June, 1903; that Rheam sent for the excavator Perry, without consulting witness, and told him to go to work; that Rheam paid some money to the men, and some was paid to the plaintiff, but witness could not say who paid it; that there was an extra flue built by plaintiff which had been included in his estimate; that he supposed that there was some change in the stone, and guessed it was ordered by Rheam; he did not order it himself; that he thought Rheam paid some material men, and knew that he had paid some carpenters. Asked who superintended the work, the witness answered: "I tried to superintend it; I think Mr. Rheam ordered the bricklayers; that he stopped the first plumber working, who threw up the job;" that the plumber told him Rheam had stopped him, and witness took the second plumber to Rheam, who thereafter paid him for his work; that Rheam had told him he would like for plaintiff to do the brickwork; that Rheam paid Riley for tarring; that the plans and specifications provided that the contractor should pay for the building permit and make the deposit for permission to cross the sidewalk; that these were paid for, but not by witness. On cross-examination, he said that he was the contractor for the job, and had received bids from several sub-contractors, including plaintiff, to do parts of the work; that from time to time he gave orders to Rheam for the payment of money due material men and workmen, which he supposes were paid. Being shown the two receipts of the plaintiff, he said that they had been written by him, save the signature, which was plaintiff's; that he supposed that he had paid plaintiff the money mentioned in the receipt; "if he had not he would not have taken the receipts;" that the payments were made in Rheam's house, in the presence of him and his wife. He also identified the following receipt as wholly written by him:

"WASHINGTON, D. C., Aug. 8, 1903.

"Received from Henry U. Rheam eleven hundred and thirty-five dollars on house No. 644 O st. N. E., to date."

He further said that Rheam had paid for the work done and material furnished to the amount of said receipt, else witness would not have given it. He also identified an order given by him to Rheam on Aug. 14, 1903, to one Riley, for $9.50, for tarring done on the house. He said, also, that he threw up the job some time in August, and that plaintiff had then finished all the brickwork contracted for except the pillars for the porch.

John W. Scott, a witness for plaintiff, testified that Rheam and plaintiff met in his presence in the fall of 1903; that plaintiff asked him for his money, and Rheam asked him why he did not finish the work, saying: "You go ahead and finish your work, and get an order from Plager, and I will pay you."

L. W. Riley testified, for the plaintiff, that Plager employed him to tar the building, and did not see Rheam about it; that Rheam directed work to be done, and paid him on the order from Plager; "that he did not go after the money, but Rheam came to his house and paid him after he had made a 'draw' from the building association."

William H. Chappell, for plaintiff, testified that he was a stone cutter, and had done work for defendants; that he estimated to furnish Indiana limestone, which he delivered; but it was returned and he furnished brownstone; that this stone was more expensive than that he had agreed to furnish; that no directions were personally given by Rheam; that about two weeks before Plager quit the job he referred witness to Rheam for money, and Rheam said that when he had finished he would pay him; that Rheam told him to get an order from Plager, which he did, and Rheam refused to honor it; but he took it to the building association, and was paid in the "wind up;" that in the "wind up," after Plager quit, Rheam was finishing the house himself.

E. T. Kauffman, for the plaintiff, testified that he had been employed by Plager to do the plumbing, having given the latter a bid, which he accepted; that before starting, Plager took him to Rheam, who told witness that he would be responsible for his money; that Rheam went to a plumbing house and secured the material; that he received instructions for the work from Mr. and Mrs. Rheam; that he was paid in part by Rheam, and a balance was still due. On cross-examination he said that he did not know who paid the money for his work, as his son had received it for him.

John F. Callan, for plaintiff, testified that he first gave an estimate for the tinning and heating to Rheam, and afterwards to Plager, as he understood that the latter had undertaken the job; that Plager did not finish the house; that he overheard Rheam tell another man that "there was dollar for dollar for every man who did work on the building, and that he would see that it was paid; that no man who did work on this building would lose a cent"; that he received money from Rheam on Plager's order, and that he did not finish his work.

Plaintiff having closed, the defendant Julia Rheam moved for an instruction to the jury to return a verdict in her favor, because she had not been shown liable for plaintiff's claim. This motion was denied and exception was taken.

On behalf of defendants, Henry U. Rheam testified, substantially, that Plager drew the plans and specifications for his house, and that he first intended to build it himself; that he changed his mind and submitted the same to Plager and two other independent contractors, I. W. Downing and Mr. Moxley; that he accepted Plager's bid of $2,350, and that the latter began work in June and continued until August 8, at which time the house was under roof and the brickwork completed, except that required for the front porch; that witness retained no control of the work, and looked to Plager for everything; that Martin contracted with Plager, and witness gave him no orders; that when he could not get Plager to attend to wetting the bricks he sent the building inspector to look after it; that he saw plaintiff before Plager quit the job, who complained that he could not get his money from Plager, and witness told him he had better finish his work before talking about

Digitized by Google

money; that Plager had given him two receipts signed by plaintiff; that he had paid no workmen or material men except upon written orders from Plager; that he never promised to pay plaintiff anything; that the first plumber threw up the job because he could not get material on credit and witness refused to stand for it; that Plager brought the second plumber, and at Plager's request, witness agreed to stand good for the material needed; that the price came out of the money he was to pay Plager, and that the tarring was paid for on a written order from Plager, because Riley had refused to do it unless witness promised to pay him; that he did not change the stone; that Plager threw up the job about August 8, and witness notified him he would finish it at his expense; that he had then paid Plager $1,135, which included all money that he had paid on Plager's orders; that after August 8 neither plaintiff nor Plager did any work on the house; that witness was compelled to finish the house on Plager's failure, and paid out altogether $2,559.38, including the $1,135 paid to Plager; that he had lost $209.38 through Plager's failure and had to give his own services in addition, which were worth about $100; that witness had some money when the contract was made, and had arranged with the Perpetual Building Association for the loan of the remainder. On cross-examination he said that he had known Plager for twenty-five years, and had required no bond from him for the performance of his contract; that he did not disburse the money for work on the house; that the $1,135 receipt of Plager included money paid for plumbing material which he had stood for to the dealers; that he did not take any of the bricks that plaintiff bought, to see if they were all right; that he did get some from the brickyard, and called Plager's attention to the fact that they were of an inferior quality; that he was around the building "pretty much all the time."

Julia A. Rheam testified, substantially, that she had given no orders to plaintiff or any one else; that she was present in her house when plaintiff received the money mentioned in his receipt to Plager, who paid him the money, and gave the receipts to her.

J. W. Downing, for the defendants, testified that he was a carpenter and contractor, and had bid on the plans for the house; that he knew that Moxley and Plager also made bids; that he did some carpenter's work on the house afterwards, for which he was paid by Plager's foreman; that Martin made him an estimate for the brickwork in writing, which had been lost. Defendants then offered to show by the witness that plaintiff had made an estimate for the same brickwork, but at a less figure than that made to Plager. The court sustained plaintiff's objection to this evidence and defendants excepted.

Upon the close of the evidence, the defendants prayed the court to instruct the jury: 1. To return a verdict for Julia A. Rheam. 2. To return a verdict for Henry U. Rheam. 3. That under the evidence Plager was an independent contractor. 4. That if Plager contracted to erect the house and furnish the labor and material therefor, for a certain sum, free from the control and direction of the defendants, he was an independent contractor, and their verdict should be for defendants, unless they found from the evidence that the defendants legally bound themselves to pay the plaintiff for his work. 5. That even if they believed from the evidence that defendant Rheam told plaintiff he would stand good for the money due him from Plager, or that he would pay him, or see him paid therefor, that such promise was not enforceable unless they found there was a consideration therefor, and that such promise, if made, was one to pay the debt of another, and if not in writing, could not be enforced. These prayers were in turn refused and exception noted.

The court then, over the objection of the defendants, charged the jury, among other things, as follows:

"That the contract of building in this case differed from most contracts of that sort, with which the jury was doubtless familiar, especially with the provisions for a bond and payments to the contractor at stated times as the work progressed; that it was a question for the jury to decide whether or not, under the arrangement between the defendants and Mr. Plager, as it appeared from all the evidence in the case, Plager was an independent contractor, and the contract between the defendants and Plager was a bona fide contract to erect the house, or was a mere form under which some other matters or things were to be done," and said in the course of his charge to the jury, in reference to the receipt of $1,135 given by Plager to Rheam: "I would take it that the receipt is in full payment of money due to date, not that it included all the work done, or that it paid for all the work done;" also, "I suppose it meant cash payment to date, not for all the work done;" but I leave all this for the jury to decide, and that "they were to decide whether the contract between Plager and Rheam was made in good faith, or whether from all the evidence Plager was merely a superintendent."

Under these instructions, the jury returned a verdict for the plaintiff for the amount claimed to be due; and from the judgment entered thereon the defendants have prosecuted this appeal.

We are of the opinion that this judgment must be reversed upon grounds that will be stated as briefly as the conditions permit, without undertaking a separate discussion of the errors that have been assigned upon the numerous exceptions taken on the trial.

The motion on behalf of the wife, Julia A. Rheam, for an instruction to the jury to return a verdict in her favor should have been granted. Aside from the fact that she had an interest in the lot, it does not appear that she had any connection with the subject-matter of the action. It is not pretended that she undertook to have the house erected or invited any bid therefor. Nor is there any evidence tending to show that she entered into any contract with plaintiff, that she undertook to pay him anything, or that she assumed any liability for contracts or promises that her husband may have made. Assuming that a married woman may be separately bound by a contract made on her behalf by an authorized agent, such agency is not implied from her relation to her husband, or from the further fact

Digitized by Google

that he may have undertaken an enterprise with a view to her benefit also. Surely, the husband may enter into a contract, having in view the ultimate benefit of his wife as well as himself, without thereby bringing her under a legal obligation. It is incumbent upon the other contracting party, if not satisfied with the husband's responsibility, to secure that of the wife in some way recognized by the law.

After refusing the instruction to return a verdict for each defendant, the case was submitted to the jury upon the theory that there was sufficient evidence from which they might deduce the inference that the contract with Plager, which the plaintiff called for and read, was a mere form or pretense, not intended in good faith to operate as an independent contract for the complete erection of the house, and that Plager was, therefore, nothing more, in fact, than a mere superintendent for the owners and real builders. In this view of the tendency of the evidence, the court should, at least, have charged the jury that the legal effect of the accepted bid was to make Plager an independent contractor for the erection of the house, according to the plans and specifications, at the price stipulated. The contract was in writing, and it was for the court to declare its meaning and legal effect, when requested so to do, and not leave it to the determination of the jury. And then the jury should have been charged that this contract relation so created made a prima facie case, entitling the defendants to a verdict, unless they should believe from the evidence that it was not a bona fide contract, but a mere form intended to conceal the real relations of the parties.

In our opinion, however, the evidence on behalf of the plaintiff, assuming its truth and giving him the benefit of every inference fairly deducible therefrom, was not legally sufficient to warrant the submission of the issue to the jury at all.

It is evident from the testimony of Plager, who was called by the plaintiff, that his bid was made and accepted in good faith, that he invited bids from sub-contractors for parts of the work, and went about the performance of his contract until his failure in August, 1903. It is also evident that the plaintiff regarded him as the contractor. He submitted his bid to Plager, received his acceptance, and required no acceptance or guaranty from the defendants. His receipts for money were given to Plager. As late as August 21, 1903, some time after his work had been done, and Plager had failed, his attorney wrote to Rheam saying that unless his debt should be promptly paid, he would proceed to enforce a mechanic's lien for the value of his labor and materials furnished "under and by virtue of a contract with William S. Plager, original contractor with owner." He had then exhausted all ordinary means to secure payment from Rheam, and knew as much at the time as he did when he testified of the actual relations of Plager and Rheam. Other sub-contractors, who testified for the plaintiff, understood that Plager was an independent contractor and made their bids to him. The circumstances that Rheam was a constant visitor, watching the progress of the work and raising frequent objections to the character of the materials, do not of themselves, or in combination with others, warrant the inference of a fact in opposition to or inconsistent with the fact before mentioned. It was clearly within the right of the owner to ascertain if the work of contractor and sub-contractors was being done in accordance with the plans and specifications, and it was reasonable to exercise that right. Regarding his objection to the Indiana limestone and its substitution by brownstone, the inference is that the latter and not the former was required by the specifications, in the absence of proof to the contrary. Again, it does not appear that the first plumber engaged by Plager was not objected to on the grounds of incompetency or inability to furnish the necessary materials. The circumstance that Rheam guaranteed the payment for the material furnished by the dealer to the second plumber bears, if anything, in favor of the defendant rather than the plaintiff. The dealer, acting upon the assumption that Plager was an independent contractor, and not the superintendent and agent of the owner, was not satisfied to credit Plager, and therefore required the owner "to stand for it." The same course was open to the plaintiff. There was nothing unreasonable or so unusual in the owner's conduct as to warrant an inference that he was concealing his true relations with Plager from the public. Strong reliance is placed upon the following circumstance: Plaintiff testified that some time after the 11th of July he asked Rheam for payment, and Rheam said, "I will stand responsible for it; you finish your work, and get an order, and I will pay you." Another witness gives the date of this statement as in the fall of 1903. If the first is correct, Plager had not then abandoned the contract; if the latter, then he had abandoned it some time before. At any rate, the work for which plaintiff has sued had then been done.

It is more reasonable to suppose, from the reference to Plager and the order from him, that the date given by plaintiff himself is the correct one. As this was not introduced as evidence of a special promise to pay, on which the action was based, but as a circumstance bearing on the true relation of defendant and Plager, it is unnecessary to consider the objections of the defendant that it was a verbal promise to pay the debt of another, as well as without valuable consideration to support it. Considered as such a circumstance, it is entitled to no weight. It simply shows, on the one hand, that plaintiff was trying to get his money, and on the other, that the defendant, his relations with Plager not being then severed, was willing to pay him, as he had done others, on the strength of his obligation to Plager. Plaintiff had not then completed his contract by building the pillars of the porch, nor has he ever done so. Subsequently, and without this completion, he obtained an order from Plager, which the defendant refused to honor. In this connection it is to be remembered that defendant's testimony to the effect that he owed Plager nothing, and that he was compelled to pay out more money to complete the house than Plager's contract called for, was not denied by Plager, who had the opportunity to do so, if untrue. Contracts for the erection of houses would be of little or

Digitized by Google

no protection to the owners of property if they could be overturned by evidence of the character relied on by the plaintiff.

For error in not instructing the jury to return a verdict for both defendants, the judgment will be reversed, with costs, and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Reversed.

Carriers—Liability for Baggage.—An initial carrier of baggage is not liable, except by special agreement, beyond its own route. Soviero v. Wescott Express Co., 94 N. Y. Supp. 375.

Carriers—Failure to Read Express Receipts.—An owner of baggage delivered to an express company for transfer held not guilty of negligence per se in accepting an express receipt containing a limited liability clause without reading the same. Colvin v. Fargo, 94 N. Y. Supp. 377.

Carriers—Care Required of Drunken Passenger.—Where a conductor accepts an unattended passenger who is so drunk as to be unable to look after himself, the railroad company is bound to exercise reasonable care to protect him. Price v. St. Louis, I. M. & S. Ry. Co. (Ark.), 88 S. W. Rep. 575.

Negligence—Care Required.—Where the invitation of the owner of a building leads a person into the basement thereof, the owner is liable for a failure to exercise reasonable care to prevent such person from falling into an ash pit there. Withers v. Brooklyn Real Estate Exch., 94 N. Y. Supp. 328.

Negligence—Doctrine of Discovered Peril.—The doctrine of discovered peril has no application, in the absence of actual and timely knowledge on the part of the person causing the injury of the peril of the person injured. Cardwell v. Gulf, B. & G. N. Ry. Co. (Tex.), 88 S. W. Rep. 422.

Negligence—Fellow Servants.—Where plaintiff was injured by the agency of fellow employees and defendant company, the presence and assistance of the act of the fellow servants held not to exculpate the other agency. Ray v. Pecos & N. T. Ry. Co. (Tex.), 88 S. W. Rep. 466.

Master and Servant—Duration of Relation.—A day laborer held to occupy, towards his master, the relation of servant while going to get his dinner pail after the day's work was done. Taylor v. George W. Bush & Sons Co. (Del.), 61 Atl. Rep. 236.

Master and Servant—Master's Duty to Inspect Street Cars.—A street railroad company held liable for injuries to a servant arising from defective inspection. Crawford v. United Rys. & Electric Co. of Baltimore, Md., 61 Atl. Rep. 287.

Washington COLLEGE OF LAW

1328 NEW YORK AVENUE

REOPENS MONDAY, OCTOBER 2,

7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,

LL. M., DEAN,

'Phone Main 4585. 416 Fifth Street N. W.

BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth st. N. W., on Monday, January 8, 1906, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 M. to 1 P. M.

H. RANDALL WEBB, *Secretary.*

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

Lancaster & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William Edward Frazier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. LAURA C. FRAZIER, 769 10th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,256. Administration. [Seal.] 51-3t

Worthington, Heald & Frailey, Solicitors

In the Supreme Court of the District of Columbia.
Albert F. Fox, Executor and Trustee, v. Sophia C. Pitchlyn et al. No. 23,861. Equity.

This cause, being referred to me to report distribution of the fund, I shall proceed with the said reference on **Wednesday, the 10th day of January, 1906, at 10 o'clock A. M.**, at the auditor's rooms in the United States Court House in this city. All persons having claims against **Caroline M. Pitchlyn**, deceased, or her estate, are notified to present the same, with the proofs, at the said time and place. JAS. G. PAYNE, Auditor. 51-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

Digitized by Google

Legal Notices.

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary E. Bryan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. SOPHIA L. KLEINDIENST, 812 23d st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,338. Adm. [Seal.] 51-3t

J. A. Sweeney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Hugh Hurney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of December, 1905. MARY A. HURNEY, 930 25th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,228. Admn. [Seal.] 51-3t

John Lewis Smith and James B. Archer, Solicitors

In the Supreme Court of the District of Columbia.
Gertrude J. Parkinson v. Robert M. Parkinson.
No. 25,670. Equity Docket, No. ——.

The object of this suit is to obtain a divorce from the defendant from bed and board upon the ground of desertion and non-support. Provided a copy hereof be published once a week for three successive weeks in The Washington Law Reporter and Washington Post. On motion of the complainant, it is, this 12th day of December, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 51-3t

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.
John A. Ruppert et al. v. Rosa Sauter et al.
In Equity, No. 25,809.

DISTRICT OF COLUMBIA, ss:

The object of this suit is to obtain a judicial construction or interpretation of the last will and testament of Agnes M. Beuchert, deceased. On motion of complainants, it is, this 12th day of December, A. D. 1905, ordered that the defendants, **Daisy Sauter, Eva Singleton, Joseph Wirth,** and **Antonio Bohrman,** cause their appearance to be entered herein, on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 51-3t

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth C. Oppermann**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. ALBERT F. FOX, 911 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,221. Administration. [Seal.] 51-3t

Legal Notices.

Douglas & Douglas, Solicitors

In the Supreme Court of the District of Columbia.
William H. Hoeke, Complainant, v. Sidney F. Marshall et al., Defendant.
Equity No. 23,455.

Sydney F. Marshall and Charles A. Douglas, trustees, having reported to the court the sale of all the right, title, and interest of Miletus J. Wine, deceased, subject to all incumbrances, in the following described real estate, situated in the District of Columbia, to wit: All of block X; all of block 1; lots 2 to 13, both inclusive, in block 3; lots 16, and 19 to 27, both inclusive, in block 5; lot 17, in block 7; all of blocks 9, 11, 15, 17, and 18; lots 15, and 25 to 30, both inclusive, in block 19; all of block 20; lots 1, 2, 5 to 19, both inclusive, and 22 to 30, both inclusive, in block 21; all of blocks 22, 23, and 24; lots 1 to 37, both inclusive, and that part of lot 38, lying in the District of Columbia, in block 25; all of blocks 26, 27, 28, and 29; lots 1 to 16, both inclusive, 20 to 33, both inclusive, and those parts of lots 17, 18, 34, 35, and 36, lying in the District of Columbia, in block 30; all of blocks 31, 32, and 33; lots 1 to 11, both inclusive, and 20 to 29, both inclusive, and those parts of lots 12, 13, 14, 30, and 31, lying in the District of Columbia, in block 35; all of blocks 36, 37, 38, and 39; lots 1 to 7, both inclusive, and 20 to 24, both inclusive, and those parts of lots 8, 9, 25, 26, and 27, lying in the District of Columbia, in block 40; all of blocks 41, 42, and 43; lots 1, 2, and 20, and those parts of lots 3, 4, 5, 21, and 22, lying in the District of Columbia, in block 44; all of blocks 45 and 46; lots 1 to 14, both inclusive; 16 to 27, both inclusive, and those parts of lots 15, 28, 29, and 30, lying in the District of Columbia, in block 47; and all of blocks 49, 50, and 51—all in Charles A. McEunn's subdivision known as "Marshall," as said subdivision is recorded in the office of the surveyor for the District of Columbia, in county book No. 6, at page 39—to John P. F. White for the sum of one thousand two hundred dollars ($1,200), it is, by the court, this 15th day of December, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **16th day of January, 1906.** Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 51-3t

W. M. Ellison, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Benjamin F. Kincannon, Deceased.
No. 13,330. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration on said estate, by **Mattie A. Kincannon**, it is ordered this 20th day of December, A. D. 1905, that notice be and hereby is given to **Thomas Redden**, and to all others concerned, to appear in said court on **Thursday, the 25th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 51-3t

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Robert I. Nevitt**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 8th day of January, 1906, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of December, 1905. ANNIE A. NEVITT, by Geo. C. Gertman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,522. Administration. [Seal.] 51-3t

Digitized by Google

Legal Notices.

[Filed December 11, 1905. J. R. Young, Clerk.]

Brandenburg & Brandenburg, Solicitors

In the Supreme Court of the District of Columbia.
Holding an Equity Court.

Ele W. Tuller vs. Unknown Heirs and Devisees of Isaac N. Hansbrough, Deceased. No. 25,780, Equity.

The object of this suit is to construe the conveyance to Ele W. Tuller and Isaac N. Hansbrough, as vesting in the complainant the fee simple title, by survivorship, and of the sale of the real estate situated in the District of Columbia, and in square 113 and bounded and described as follows: being lots 15 and 16 in said square, bounded on the north by Road street, on the south by Stoddard street, on the east by Green street, and on the west by Washington street, said two lots fronting on Washington street, opposite Cook's Park. The defendants to this suit are the unknown heirs and devisees of Isaac N. Hansbrough, deceased. On motion of the complainant, by Brandenburg & Brandenburg, his solicitors, it is this 11th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Re-
[Seal] porter and in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. Dec. 22-29, Jan. 19-26, Feb. 16-23

Robert P. Shealey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Thomas Montgomery**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1905. MARGARET M. MONTGOMERY, 401 st. N. E. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,230. Administration. [Seal.] 51-3t

SECOND INSERTION.

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louis Meyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of December, 1905. MARIA MEYER, 1744 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,125. Administration. [Seal.] 50-3t

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.
William A. Gordon et al. v. William H. Collins et al.
Equity No. 25,185.

The object of this suit is to substitute new trustees under the will of William C. Hazel, deceased, for management of certain property in square 1256, in the city of Washington, in the District of Columbia. On motion of the complainants, it is, this 14th day of December, A. D. 1905, ordered that the defendants, **William Joseph Havenner, Mamie Gray, John Gray, Elizabeth M. Gray, and Jeanne Swart**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks. WEN-
[Seal] DELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 50-3t

Legal Notices.

John D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Marguerite M. O'Neill**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. HARRY H. NICHOLS, 509 O st. N. W.; JOHN D. COUGHLAN, 500 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,292. Administration. [Seal.] 50-3t

W. E. Ambrose, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Lucinda Bailey, Deceased.
Admn. No. 12,989.

Upon hearing the report of William E. Ambrose, administrator c. t. a. of Lucinda Bailey, deceased, stating that he has sold lot seven (7) in square one thousand and one (1001) to John Appich for the sum of eighteen hundred dollars ($1,800.00), it is, this 8th day of December, 1905, ordered, adjudged, and decreed that the said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **8th day of January, 1906**. Provided that a copy of this order be published once a week for three successive weeks in The
[Seal] Washington Law Reporter prior to said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 50-3t

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.
Lee Eugene Turner et al. v. Emily A. Moxley et al.
Equity No. 16,875.

Upon consideration of the report of the trustees, this day filed, it is by this court, this 23d day of November, 1905, ordered that the trustees be, and they are hereby, authorized to accept the offer of W. Riley Deeble for the purchase of the property known as Nos. 1117, 1119, and 1121 Thirtieth street northwest, located on the north 12½ feet of lot 188, and the south 24 feet of lot 186, in square 1196, in this city and District, for the sum of $2,750 cash, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the said purchaser or his assigns. Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and
[Seal] The Washington Post before said final ratification. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. L. Williams, Asst. Clerk. 50-3t

Chas. W. Darr and R. A. Curtin, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary E. Cook, Deceased.
No. 13,247. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Matthew E. Cook, it is ordered this 13th day of December, A. D. 1905, that notice be and hereby is given to **Thomas Hardesty, Reeze Hardesty, Georgiana Penn, Frank C. Farr, and Bowman Farr**, and to all others concerned, to appear in said court on **Monday, the 15th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be
[Seal] not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court 50-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 513 Fifth Street, N. W.

Digitized by Google

Legal Notices.

E. P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William E. Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. ELLWOOD P. MOREY, Wash. Loan and Trust Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,210. Administration. [Seal.] 50-3t

Sheehy & Hogan, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Peter F. Hornig**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of December, 1905. JOHN G. HORNIG, 1020 B st. N. E.; GOTTFRIED HORNIG, 937 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,326. Administration. [Seal.] 50-3t

Worthington, Heald & Frailey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth A. Pyne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. JOHN PYNE, 157 E. Ninety-fifth st., New York; HENRY R. PYNE, 106 E. Fifty-fifth st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,305. Admn. [Seal.] 50-3t

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.

Carl L. Davis, Ralph P. Barnard, Trustee, Guy H. Johnson, Trustee, and Isadore T. Young, Complainants, v. Henry F. B. Pardon, and his Unknown Heirs, Alienees, and Devisees, Defendants. No. 25,759. In Equity, Docket 57.

The object of this suit is to reform a deed recorded in Liber J. A. S. 164, at folio 419, one of the land records of the District of Columbia, conveying part of lot numbered one (1), in square numbered seven hundred and ninety-three (793), improved by the dwelling No. 423 Fourth street southeast, in the city of Washington, District of Columbia, and to establish of record the title of the complainant thereto, subject to the deed of trust, as prayed for in the original bill in this suit. On motion of the complainant, it is by the court this 11th day of December, A. D. 1905, ordered that **Henry F. B. Pardon and his unknown heirs, alienees, and devisees** (if he be dead) cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order, good cause for shortening said [Seal] period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-3t

Justice blanks of every description for sale at this office.

Legal Notices

J. Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia.

Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 14th day of December, A. D. 1905, ordered that said trustee be authorized to accept the offer of Mary J. Watkins to purchase at private sale for $2,541.78, lots fifteen (15) and sixteen (16), in block nine (9), of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed as reported, unless cause to the contrary be shown on or before the **14th day of January, A. D. 1906**. Provided a copy of this order be published in The Washington Law Reporter once a [Seal] week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

Hamilton & Colbert, Solicitors

Filed December 8, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Mary Clark et al. v. The District of Columbia et al.
No. 25,461. Equity Docket No. 56.

The object of this suit is to have set aside and declared null and void certain tax sales made by the District of Columbia to the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams**, of the property known and described as part of lots one (1) and twenty-one (21), in square 581, improved by premises No. 437 and 439 2d st. S. W., Washington, D. C., and lot 35, square 471, improved by No. 616 K st. S. W., and to have certain deeds, based upon said illegal tax sales, set aside and declared dull and void. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter. On motion of the complainant, it is, this 8th day of December, A. D. 1905, ordered that the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. [Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

Hamilton & Colbert, Attorneys

In the Supreme Court of the District of Columbia,
Holding the Probate Court.

In re Estate of John J. Reilly, Deceased.
Administration. No. 9121.

On consideration of the report of Julia J. Byrne, administratrix, it is, this 12th day of December, 1905, ordered that the offer of William O'Mealey, to purchase the property known as lots 31 and 32, in block 6, Buena Vista Heights, in the county of Washington, D. C., for the sum of $800.00, payable in one-third cash and the balance in one and two years, with interest at 6%, said deferred payments to be secured by deed of trust upon the property sold, be, and the same is hereby, accepted, unless cause to the contrary be shown on or before the **12th day of January, 1906**. Provided a copy of this order be published once a week for three suc- [Seal] cessive weeks before said date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 50-3t

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor having reported that he has sold premises No. 1617 Fourth street Northwest, Washington, District of Columbia, being lot numbered forty-eight (48) in square five hundred and twenty (520) according to Jesse D. Gibb's subdivision of part of square aforesaid, as recorded in Liber No. 20, folio 83, of the surveyor's office, District of Columbia, to George W. Ray, for twenty-six hundred ($2,600) dollars, all cash, less three (3%) per cent brokerage commission, it is by the court, this 12th day of December, 1905, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **12th day of January, 1906**. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills. 50-3t

Digitized by Google

Legal Notices.

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Julia R. Balch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. WILLIAM C. BALCH, 908 O st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,298. Administration. [Seal.] 50-3t

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Christian Sproesser**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1905. KATHARINA SPROESSER, 807 G st, N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,311. Administration. [Seal.] 50-3t

THIRD INSERTION.

Jos. A. Burkart, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Frank B. Marlow**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. JOS. A. BURKART, 516 Corcoran Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,309. Administration. [Seal.] 49-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Celia E. V. Beall**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. LIZZIE B. GLADMON, care of Gordon & Gordon, 330 4½ st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,871. Admn. [Seal.] 49-3t

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of **Carl A. Lindquist**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Wednesday, the 27th day of December, 1905, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of December, 1905. EDWIN B. HAY. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,457. Administration. [Seal.] 49-3t

Legal Notices.

James F. Bundy and Geo. F. Collins, Solicitors

In the Supreme Court of the District of Columbia.
Howard Broadus, Complainant, v. Georgiana Broadus and Alphonso Waters, Defendants.
No. 24,903. Equity Docket No. 55.

The object of this suit is to obtain an absolute divorce on the grounds of adultery. On motion of the complainant, it is, this 29th day of November, A. D. 1905, ordered that the defendant, **Alphonso Waters**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, said order to be published in The Law Reporter and The Bee once a week for three weeks; otherwise the cause will be proceeded with as in case of default.
[Seal] By the Court: THOS. H. ANDERSON, Justice.
True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 49-3t

Geo. E. Tralles and A. A. Birney, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Ellen Larguey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **1st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1905. ELLEN KILROY, Oneida, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,310. Administration. [Seal.] 49-3t

Jos. A. Burkhart, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Johanna Kennedy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. RICHARD A. O'BRIEN, 319 B St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,241. Administration. [Seal.] 49-3t

Filed December 7, 1905. J. R. Young, Clerk.
L. P. Harlow, Solicitor

In the Supreme Court of the District of Columbia,
Holding an Equity Court.
Violet Simpson, Complainant, v. Ollie Simpson, Ella Giesling, Defendants. Eq. No. 25,836. Doc. 57.

The object of this suit is to obtain an absolute divorce. On motion of the complainant it is this 7th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times.
[Seal] WENDELL P. STAFFORD, Justice.
A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Dec. 8-15-22

Lambert & Baker, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Daniel F. Shea**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. ANNIE E. SHEA, 1919 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,276. Administration. [Seal.] 49-3t

Digitized by Google

Legal Notices.

W. Russell Graham, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Joseph S. Tucker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. DE WITT CLINTON L. TUCKER, 1320 K St., S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,212. Administration. [Seal.] 49-3t

D. W. Baker and Fountain Peyton, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William O. Holmes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1905. WALTER H. BROOKS, 1425 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,012. Administration. [Seal.] 49-3t

John S. Alleman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James P. Wilson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. EMMA FLORENCE WILSON, 811 North Carolina ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,320. Administration. [Seal.] 49-3t

Berry & Minor and Hugh B. Rowland, Attorneys
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry Van Ness Boynton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of December, 1905. HELEN AUGUSTA BOYNTON, care of Berry and Minor, 705 Colorado Bldg., Washington, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,008. Administration. [Seal.] 49-3t

Campbell Carrington, Solicitor
In the Supreme Court of the District of Columbia.
Mabel Huff, Complainant, v. Warren Rutledge Huff, Defendant, Clara De Marr, Co-respondent.
No. 25,658. Equity Docket No. 57.

The object of this suit is to obtain an absolute divorce upon the grounds of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this 6th day of December, A. D. 1905, ordered that the defendant, **Warren Rutledge Huff**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. [Seal] Dec. 8-15-22

Legal Notices.

Edward A. Newman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Aretta G. Condict**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1905. FRANK G. CARPENTER, 1318 Vermont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,886. Administration. [Seal.] 49-3t

F. R. Keys, Solicitor
In the Supreme Court of the District of Columbia,
Holding an Equity Court.
John H. Robinson v. Ella Robinson and George Mahoney, Co-respondent. Equity, No. 25,698.

On motion of plaintiff, by F. R. Keys, his solicitor, it is ordered that the defendant, **Ella Robinson**, and the co-respondent, **George Mahoney**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Times. Done this 3d day of November, 1905. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. [Seal] 49-3t

W. H. Robeson, Attorney
In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of James Smith, Deceased.
No. 11,789.
ORDER.

In the Supreme Court of the District of Columbia, holding a Probate Court: This cause coming on to be heard upon the petition of the administrator, and it appearing to the court that the administrator has appointed the **29th day of January, 1906**, for a meeting of persons entitled to distributive shares or legacies or a residue out of the estate of James Smith, the said action of the administrator in fixing said date is on this, the 1st day of December, 1905, hereby approved. And it further appearing to the court that all the heirs at law, next of kin, and distributees of the said James Smith, deceased, are non-residents of the District of Columbia, and so far as known to the said Samuel A. Putman, administrator, are named as follows: **Walter Harrington, Henry Harrington, Frank Harrington, John A. Smith, Martha Ann David, nee Woodworth, and Charles Woodworth.** And it further appearing to the court that the said Martha Ann David is a person of unsound mind and without committee or guardian, William H. Woodwell is hereby appointed a guardian ad litem for the purpose of the preservation of her interests in this proceeding, if any she have. It is further ordered that a copy of this order be mailed to said parties by said administrator by registered letter; and also that a copy of this order be published in The Washington Times and The Washington Law Reporter in each week for four successive weeks, the last publication to be at least twenty days prior to said 29th day of January, 1906. WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. [Seal] 49-4t

George C. Gertman, Attorney
Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **August G. Romacker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1905. GEORGE P. ZURHORST, 301 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,318. Administration. [Seal.] 49-3t

Digitized by Google

The Washington Law Reporter

A WEEKLY NEWSPAPER OF LEGAL INFORMATION.
ESTABLISHED 1874.

ANNUAL SUBSCRIPTION $3. SINGLE COPIES 10 CENTS

RICHARD A. FORD, Editor. MARK W. MOORE, Gen. Manager.

VOL. 33 (WEEKLY) No. 52

Published by
THE LAW REPORTER COMPANY OF WASHINGTON CITY
Incorporated 1886.
Office of Publication: 518-520 FIFTH STREET, N.W.
Telephone Main 828.

WASHINGTON, D. C. - - - DECEMBER 29, 1905

CONTENTS.

Editorial 817
In Memoriam—William John Miller 818
SUPREME COURT OF THE DISTRICT OF COLUMBIA:
Emilie M. Darneille v. Phil. H. Tuck et al 821
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:
William W. Payne et al, appellants, v. Leigh Robinson, executor, et al 825
Legal Notices 828

Our Thirty-third Volume.

With this issue we conclude the thirty-third volume of THE WASHINGTON LAW REPORTER. For practically a third of a century the paper has been devoted to the interests of the legal profession in this District; and if we may judge from the expressions of appreciation constantly received, the service rendered has been of no small value. During a portion of the time it afforded the only means for the preservation of the opinions of our courts; and even since provision was made by law for reporting the opinions of the Court of Appeals, its prompt publication of those opinions has proven most helpful and advantageous to the members of the bar and the courts. It yet continues the only medium for preserving in permanent form the decisions of the Supreme Court of the District in important cases. The opinions of that court reported in these columns during the past twelve years, and which will not be found elsewhere, would make several volumes. Many of these are cases of exceptional interest and importance, frequently cited as authorities, not only in our local courts but in other jurisdictions. Several such cases will be found included in the contents of the present volume.

The value of THE LAW REPORTER in this particular could be very greatly enhanced if we could enlist the assistance of the members of the bar. Many of them have placed us under obligations in this respect during past years, and we will be glad to see the number largely increased. Few courts possess the wide jurisdiction exercised by the Supreme Court of this District, by reason of its location at the Capital of the Nation. Questions of interest, not only locally, but to the country at large, are constantly being presented for determination; and we shall be glad to do all in our power to aid in affording a permanent record of such adjudications.

The present volume will be found to contain an even larger number of opinions reported than usual. Many of them deal with questions of great importance, involving the construction of sections of our code. The contents of the volume are practically the equivalent of several volumes of reports.

The table of cases reported and index will be furnished to our readers during the coming week. Meanwhile those who have not placed their orders for the bound volume for 1905 should do so without delay.

The 1905 Supplement to U. S. Compiled Statutes.

We are indebted to the publishers, the West Publishing Company, of St. Paul, Minn., for a copy of the 1905 Supplement to the U. S. Compiled Statutes, 1901, previously issued by that company, and which have proven so valuable and helpful. The present volume is a cumulative supplement, taking the place of the 1903 supplement, and bringing the original work down to date. It contains the general laws of the 57th and 58th Congresses, arranged in the order of the 1901 volume, with annotations explaining fully the relation of the amendments and new legislation to the older statutes, and a full index, complete tables, etc. Matters which are excluded from the text by their temporary nature are referred to in the notes. The Compiled Statutes, with this supplement for 1905, show all the general laws of the United States now in force.

The compilation is made by John A. Mallory, assisted by members of the publisher's editorial staff, which is a guarantee that the work has been well and accurately done. Typographically the volume is all that could be desired, as may be said of all the publications issued by the West Company. The price of the volume is $5 delivered, and it may be ordered through this office.

Principal and Agent—Proof of Agency.—Agency may not be established by the declarations of an alleged agent, nor can his admissions and statements bind the principal until the agency is shown. Higley v. Dennis (Tex.), 88 S. W. Rep. 400.

Digitized by Google

In Memoriam.

WILLIAM JOHN MILLER.

A meeting of the bar of the District was held on October 27, 1905, to pay respect to the memory of the late William John Miller. Mr. Hugh T. Taggart called the meeting to order, and Mr. Chas. W. Clagett acted as secretary.

Mr. Justice Ashley M. Gould was chosen to preside, and in taking the chair spoke as follows:

Address of Mr. Justice Gould.

Brethren of the Bar: The object of this meeting has already been stated by the president of the Bar Association. I do not suppose it is expected that the presiding officer make any remarks, as that office is to be performed by other gentlemen. This has occurred to me, however, as I face this audience. I have a picture, taken in 1897 I think, of the then members of the bar, or a very large number of them, and last evening I happened, without having this meeting in my mind, to look at that picture as it hangs on my library wall, and I was impressed, very deeply impressed, with the large number of those whose pictures formed a part of that group, making up at that time the members of the bar, who have passed beyond the "great divide," and are no longer among us. And Mr. Worthington remarked to me as I sat beside him just now that in his case, after his long experience at the bar, the number of those whose memory he now most cherishes is greater than the number of the actual practitioners at the bar today. And it is fit and proper that as these men who have borne their part honorably and well in discharging the important duties of lawyers in this community pass away, the bar should gather together and express, through formal action, what is in the hearts of every one of us towards those members whose memory we honor, in the form of permanent resolutions.

The following committee was appointed to report appropriate resolutions: Mr. Eugene Carusi, Mr. William F. Mattingly, Mr. Nathaniel Wilson, Mr. Frank W. Hackett, Mr. J. J. Darlington, Mr. R. Ross Perry, Mr. James G. Payne, Mr. William A. Gordon, Mr. T. Percy Myers.

The committee reported, through Mr. Eugene Carusi, who, in presenting the report, spoke as follows:

Address of Mr. Eugene Carusi.

Mr. Chairman, William John Miller died on the 15th day of May last, and on the following day a sketch of his life was published in the columns of The Washington Post. It is, therefore, unnecessary in presenting these resolutions for me to repeat what has already been said about our deceased brother. But the long and intimate association that existed between us prompts me to bear testimony to the noble qualities of heart and mind which so eminently distinguished him, and which endeared him to every one who knew him; and yet, this very intimacy, and the esteem and affection engendered by it, makes it difficult for me to pronounce even the simplest words of eulogy.

Mr. Chairman, he was an honest, brave, and loyal man. Not only did he never do a dishonorable thing, but I believe he never entertained a dishonorable thought. He was incapable of a mean or dishonest action. His perfect integrity impressed itself upon everybody who came into business relations with him, and during his long career at this bar, in no instance has anyone ever questioned his honor, his truthfulness, or his fairness. But not the least of his virtues, sir, was his charity. I do not mean charity in that sense which consists of almsgiving, although his hands were ever ready to reach out to help the poor and afflicted, but charity in that broader sense which recognizing the brotherhood of man, renders him kind and lenient in his judgment of others. Ever mindful of the precept which commands us to say nothing of the dead except what is good and true, he extended the scope of that obligation by applying it to the living as well as to the dead. Nobody ever heard him speak a word of evil about another. He was loyal to all his obligations, professional and otherwise. Seeing his duty clear, he never hesitated to perform it. No influence could swerve him; no personal considerations could make him deviate from the path of right. He was insensible to fear, either physical or moral.

Mr. Chairman, in the death of William John Miller the community has lost a good and useful citizen, and the profession of the law, in the practice of which he continued up to the last days of his life, has lost an honored member.

I will now read the resolutions which have been prepared by the committee:

Resolved: That in the death of William John Miller, who for nearly half a century was an active member of the bar of this District, the bar has suffered a loss which is deeply felt by his contemporaries and by all of the profession who knew him.

During his long and honorable career he was a consistent example of the best traditions of the bar. He was universally respected for his courage, his integrity, his courtesy, and remarkable industry, and was noted to an unusual degree for the fairness and generosity which characterized all his dealings with his brother lawyers, the younger as well as the older, in court and out of court.

So perfect was the confidence placed in his integrity and truthfulness that his simple word carried all the weight of the most formal stipulation.

His perfect integrity won for him a secure place in the respect and confidence of all his fellow citizens that knew him, and his long and active participation in a broad and varied field of charitable enterprise has made the whole community his debtor, and entitles him to an abiding place in their grateful and charitable remembrance.

Resolved: That our sympathy, with a copy of these resolutions, be tendered his widow and children and that the Court of General Terms be requested to cause a copy of these resolutions to be entered upon its records.

Address of Mr. Frank W. Hackett.

Mr. Chairman: The motion for the adoption of these resolutions I second with all my heart.

Digitized by Google

They are expressed in moderate terms, but so far as they describe our brother Miller, every word of them is true.

It is the pride of our profession, and one of the bright incentives to a young man entering our profession, that the world can observe how cordial and genuine is the sympathy between brother lawyers, how they esteem each other, and how that esteem in time ripens into affection.

To the layman it may seem somewhat strange that these periods recur of coming together and passing resolutions with regard to our brothers who have passed away, but a little reflection will show how natural it is. This mark of esteem is reserved for men who have been long at the bar and who have been conspicuous for ability and high professional character. At the outset, when a young man enters upon the serious duty of becoming an officer of the court, as an attorney of the court, he is required to be of good moral character. As he proceeds he acts in the open. Every member of the bar, sooner or later, is likely to know something about him. Thus, everything being fair and above board, we get to understand each other, we trust each other, and we recognize the qualities of character, of mind and of heart that each of us may possess. Consequently, we are only too willing to come together and take the satisfaction that there may be in expressing, on occasions like this, our genuine feelings with regard to a brother who has passed away.

It was my fortune to occupy an office in the same building with William John Miller for nearly a quarter of a century, and all of you here, practicing lawyers, know how much propinquity has to do with acquaintance, and also with friendship. We lived in the same quarter of the city, and time and time again have I walked home with him of an evening. Little by little I got to know him very well indeed; and, before I was aware of it, I found that there was hardly anyone in the profession who had laid a firmer hold of my affections than William John Miller. He had animation and buoyancy of spirit; so much so that I was astonished when, at a later period of our intimacy, I found out what his age really was. He was one of the happiest men that I ever knew.

Mr. Miller was a good lawyer. He had a retentive memory, and he prepared his cases with scrupulous care. He had a habit of applying himself to his work with an industry that seemed to have no end. When he drafted a bill in equity, he would follow the old style, and he seemed to think it very important that every word of the old-fashioned, long, and involved English chancery forms should be there.

Now, that was not because he did not see the force and application of brevity, but it was from an ingrained spirit of duty, from the determination that he was going to do for his client everything that mortal man could do; I think it is not an exaggeration to say that no member of this bar ever applied himself more assiduously or with greater fidelity to the cause of a client than did he; and what is better than that, I think our brother Miller had more of an instinctive sense of justice, he knew to a certainty what was right quicker than almost any lawyer whom I can now recall. Mr. Miller never took up the case of a client unless he thought his client was in the right; and he carried that belief up to the very last stage in which he could be of service. I doubt whether any practitioner at this bar has ever been more faithful to his clients than was William John Miller. He has left behind him a bright example of an unbroken devotion to his profession over a long period of years.

But I must not trespass upon the time of this meeting. Let me say to any of the younger members of the bar present who did not happen to know Mr. William John Miller well, that they may be sure that every word of these resolutions voices the man.

Address of Mr. T. Percy Myers.

Mr. Chairman, I do not feel that I can allow this occasion to pass without saying a few words in respect to the memory of Mr. Miller. It was my privilege within a few months after my admission to the bar in this District to have him meet me on the street, I may say, and ask me to take adjoining offices with him, his former associate, Mr. Carusi, having at that time changed his vocation for the time being, and accepted the office of president of a local title insurance company. I was daily associated with Mr. Miller for thirteen years. I think I may say that no man at this bar now, with the exception of Mr. Carusi, knew Mr. Miller better than myself. My friendship and relations with him, as I have said before, began when the association in practice with Mr. Carusi parted.

Mr. Miller was a man who looked into every case before he accepted it, and if he did not believe, and conscientiously believe, that his client was in the right, he would unhesitatingly decline to accept the case. I have known that to occur many, many times. But, as Mr. Hackett has said, when he undertook a case for a client, nothing was left undone. The size of the case counted for naught with him; whether it involved $25 or $50,000 his client received the benefit of the same work, his interests the same consideration. And I think that if we look over the docket of the Supreme Court of the District of Columbia in the cases in which Mr. Miller participated, we will find that he was usually on the right side. I know that of personal knowledge during the thirteen years for which it was my privilege to be associated with him.

Now, as to Mr. Miller's integrity. Sitting side by side with him for thirteen years, seeing, not only his clients come into the office, but people interested on the other side—interested in many ways—I have never once heard a man question Mr. Miller's integrity or truthfulness. I think I can fairly say that there is not a member of the bar who would not have accepted Mr. Miller's word as soon as have accepted his bond.

I have thought, in many cases, that he went to extremes in his conscientiousness, because, in these days of more active life than when he first began practice, I do not think it is the practice of all of us to give the same care to small details that he did. On one occasion I remember of a trusteeship of many years' standing, where there was a small balance in bank, which was counted in the pennies and not in the dollars, and yet Mr. Miller took the better part of a

Digitized by Google

day in ascertaining to whom those few pennies belonged, and he saw that every man entitled received his share.

In regard to Mr. Miller as a man and citizen, I think we may look beyond him, to what he has left behind him, and by that I mean his boys. Mr. Miller left surviving him six sons, and I am sure that not one, here or elsewhere, ever heard of a disparaging word spoken of one of them. Their success in life—and there are four of them who have attained success—has been entirely due to the example set by their father. They show today the same industry and integrity and, consequently, are attaining the same success. And when we come to regard the life of a man as a citizen, I do think we should give full credit to the man whose sons are examples and followers of his successful life, for without the example and teachings of the father the career of the sons might be far different.

As my brother Hackett has already said, he had a joyful spirit and a spirit of fairness to all men. He did not judge the man always when he was judging the act. He would many times condemn an act, yet when the condemnation was applied to the person who had committed the act, there was in his charitableness, his generosity of heart, always something that softened his feelings toward the wrong-doer; and I do not think that I have ever known a man—I know that I have not—who so completely won my esteem and loving affection as William John Miller. Had I lost one of my own family I could not have been more deeply grieved, and, I may say, afflicted.

Address of Mr. Samuel R. Bond.

Mr. Chairman: I had not expected to say anything on this occasion, but I am moved at this moment to add a very few but very earnest words of commendation of the life and character of him whose loss we are met to commemorate. I was acquainted with Mr. Miller for nearly, if not quite, forty years. During a large part of that time our residences have been near together, and our offices equally near. We have gone to and fro very frequently; our paths have crossed almost daily: never without a friendly and cheerful greeting between us. I recall just now that on the occasion of the funeral of the late Mr. Justice Cole I was driving to the church where the funeral services were to occur, and met, in front of this courthouse, Mr. Miller, who was crossing toward his office. I accosted him and asked him if he would ride with me to the church where the services were to take place. He said at once that he would be glad to do so; that he had returned that morning from a visit to his son in New York, and he expressed his great surprise and great regret at the sudden death which was the occasion of that meeting. In driving to the church he spoke of others who had recently left our ranks and raised the question, "who among us will be next," and "who of us two will be next?" Little did I think that he would be, if not the next, almost the next, to follow Mr. Justice Cole to that country from whose bourne no traveler returns.

I can agree with everything that has been said in commendation of Mr. Miller; I have felt in my intercourse with him that his spoken word was as good as his written stipulation.

I knew his charitable disposition, and I never, in my intercourse with him, heard him speak harshly toward any other member of this bar. His character was built up from the foundation with virtue, acquirements, and principles of honesty and honor and sterling worth, which, although his loss is great to us, will assure to him—I believe firmly will assure to him—a lasting and eternal reward.

The resolutions were unanimously adopted and the meeting adjourned.

Bankruptcy—Dismissal of Involuntary Petition—Creditors Liable for Expense of Receivership.

The United States Circuit Court of Appeals for the Second Circuit, in a recent bankruptcy proceeding (In re Lacoy, reported in the New York Law Journal), held that where, upon commencing a proceeding against a debtor to have him adjudicated a bankrupt, the petitioning creditors applied for and obtained the appointment of a receiver of the debtors' property, and the proceeding was subsequently dismissed as unfounded, the receiver in the meanwhile having entered upon his duties, taken charge of the property, and incurred expenses, the petitioning creditors are liable for the costs and expenses of the receivership. Although there is no express provision in the bankruptcy act to compel the petitioning creditors to pay such costs, the court has implied authority so to do.

As the bankruptcy court has power to make an order directing the payment of the costs of the receivership, it also has power to enforce its lawful order by a proceeding for contempt. Semble, that the enforcement of the contempt proceeding is not equivalent to imprisonment for debt within the meaning of section 990 of the United States Revised Statutes. Semble, section 990 is, by implication, repealed so far as it may conflict with the express provision of section 2, subdivision 13, of the bankruptcy act.

Section 990 has no application to a case in which imprisonment for failure to obey the lawful order of the court is permitted by the law of this State. By such law (section 1241 of the Code of Civil Procedure), disobedience of an order is punishable as and for a contempt where it requires the payment of money to a court or an officer of the court, and the order under review, requiring the payment to the receiver, being an officer of the bankruptcy court, can, therefore, be enforced by punishment for contempt.

Trusts—Transactions with Beneficiaries.—Where sale of property from trustee to beneficiaries was conducted fairly, beneficiaries could not, after lapse of four years, repudiate the transaction and have the sale set aside. Skelding v. Dean (Mich.), 104 N. W. Rep. 410.

Bankruptcy—Claims Against Estate.—Where a claim against a bankrupt's estate was in proper form and duly verified, except in particulars waived, the burden of proof was shifted to the objectors. In re Carter, U. S. D. C., W. D. Ark., 138 Fed. Rep. 846.

Digitized by Google

Supreme Court of the District of Columbia.

EMILIE M. DARNEILLE
v.
PHIL. H. TUCK ET AL.

MARRIED WOMEN; MORTGAGE OF SEPARATE PROPERTY FOR DEBT OF HUSBAND; SECS. 1154, 1155, CODE D. C., CONSTRUED.

1. Under Sec. 1154, Code D. C., providing that all property of a married woman shall be held to her separate use as fully as if unmarried, and may be disposed of by her by deed, mortgage, etc., as fully as if she were unmarried, a deed of trust of her separate property, executed by her jointly with her husband, to secure an indebtedness of the husband, is valid and enforceable.
2. The proviso to section 1155, Code D. C., declaring "that no married woman shall have power to make any contract as surety or guarantor, or as accommodation drawer, acceptor, maker, or indorser," is limited in its operation to the section in which it occurs—that is, as limiting her power to contract liabilities enforceable by action and execution at law.

No. 25,550, Equity Docket 57. Decided December 22, 1905.

HEARING on bill in equity for an injunction. Bill dismissed.

Mr. L. A. Bailey for the complainant.

Messrs. Gordon & Gordon for the defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

The complainant is a married woman and the wife of one of the defendants, Philip A. Darneille. The bill is brought to secure an injunction against the sale of her real estate under a deed of trust and also to have a will affecting her title construed. She alleges that she holds the property to her sole and separate use by virtue of a devise from her mother; that the deed of trust in question was executed by herself and her husband March 29, 1904, to secure a note for $19,000 and various interest notes; that there was a previous deed of trust given June 15, 1901, for $15,000, which was in default in the spring of 1904, and the new deed of trust was given to procure means for taking up the former deed of trust to pay interest, taxes, and incumbrances upon the property, and to pay certain debts of the husband; that defendant Keyser lives in Baltimore and is the beneficiary under the present deed of trust, and was also the beneficiary under the $15,000 deed of trust; that the defendant Tuck is a lawyer and acted as attorney for Keyser; that the property has been advertised by the trustee, the defendant Tuck, for sale; that the deed of trust in question was also signed by the daughters of the complainant, and by its terms the surplus upon sale was to be paid to the complainant, her husband and children. She alleges that she signed the notes and deeds solely at the request of her husband and for his benefit, under his persuasion, without advice of counsel, and unconscious that she was incurring any danger of losing the property; that she never read the deed, but relied entirely upon her husband's request; that Keyser never loaned any money to the complainant or to her and her husband; that neither the complainant nor the complainant and her husband were ever indebted to him; that the note for $19,000 and the interest notes were signed by herself and her husband jointly, but were signed by her merely as an accommodation maker, as all the defendants knew; that the deed as to her was without consideration, and she was only a surety or guarantor, as the defendants knew. She alleges that it was without her knowledge or consent that the deed was so drawn as to create, or attempt to create, a trust estate in said property for her husband and children; that the deed was so drawn by some one acting in the interest of Keyser, with full knowledge of the true state of the title; that the property is the complainant's home, and, if offered for sale as a whole, is in her belief worth $40,000, and, if subdivided, much more; that by said will, after the devise of said property to the complainant and her heirs, it is provided that after the complainant's death said property shall be the property of her children in fee simple, to be assigned and partitioned as the complainant by will may direct, and in case of complainant's death not leaving issue, then to complainant's sister, Harriet B. Chesley; that she claims the title in fee simple, but that her title is in question among experts; that owing to said uncertainty the sale before a judicial determination of the effect of said will would be disastrous to all concerned; that the note for $15,000 was the joint and several note of the complainant and her husband, but it was without consideration as to her, and was signed by her only for the benefit of her husband, as the defendants knew; that Keyser was about to foreclose the deed of trust of 1901, through his agent Tuck, to avert which the complainant and her husband gave the note and deed for $19,000; that the complainant never received any part of the $15,000 or the $4,000 going to make up the $19,000; that a part thereof was for commission for Tuck on the loan, and part for half commission on the withdrawn sale, and part for money claimed to be owing to Keyser from her husband. She prays for an injunction to prevent Tuck from selling or proceeding further under the advertisement until further order; that the court determine and declare the true meaning and effect of the will; that she be declared to have a fee simple; that the deed and note of March 29, 1904, be canceled, so far as she or her property is concerned; that if said note and deed be valid as to her in whole or in part, that she may have an accounting to ascertain the amount due from her or chargeable against her property, and that the deed be corrected in respect to the creation of the trust for her husband and children; that Tuck be restrained from proceeding under said deed or interfering with complainant's possession until all question as to title and indebtedness as to complainant shall have been determined; that if said property is to be sold it may be sold in parcels under direction of the court.

The bill was filed July 10, 1905, and on the same day a rule was issued for the defendants to show cause on July 13 why an injunction should not issue as prayed. On July 13 defendant Keyser answered the rule admitting the ownership of the note secured by the deed of 1904, and saying that he loaned the complainant and her husband $19,000 through said Tuck after an examination and report on the title which satisfied him; that he received from

Digitized by Google

complainant and her husband their principal note for $19,000, payable in five years, and ten interest notes for $570 each, payable at intervals of six months; that the first fell due September 29, 1904, and was not paid, but has since been paid to the extent of $300; that the second, due March 29, 1905, has not been paid in any part; that the taxes for the year ending June 30, 1905, are unpaid; that the debt amounts to twenty thousand one hundred and ninety-three dollars and eighty-one cents ($20,193.81); that from the $19,000 loaned by him to complainant and her husband he was paid the $15,000 and interest due under the deed of 1901, and the sum of twelve hundred and twenty-six dollars and ninety-six cents ($1,226.96) due him from the husband for moneys put in his hands to loan; that said deed of 1901 had been signed by complainant, her husband, and children, and was to secure $15,000 loaned by him to complainant and her husband; that the new loan of $19,000 was made on request of complainant on condition that the debt of $15,000 with interest, and the $1,226.96 due from her husband should be paid back to him; that the new loan was made for $19,000 in order to pay off incumbrances subsequent to the loan of 1901. On belief he denies that the complainant was ignorant of the contents or legal effect of the deed of 1904 and charges that she was fully informed thereof. He denies on advice that she is an accommodation maker, or surety, or guarantor. He says that the provisions in the deed were made by counsel learned in the law for the purpose of conveying the whole title; that he believes the property will sell to better advantage as a whole than if divided, and that its value is little, if any, more than the amount due him. On the same day the defendant Tuck answered the rule, saying that the loan of $19,000 was made through him; that the payments therefrom to Keyser were made by direction of complainant, and the balance, after payment of charges and expenses, was paid by check of said Tuck to order of complainant and her husband; that the payments to said Tuck were for commissions and were made willingly by complainant; that she acted throughout of her free will. On July 18, defendant Keyser filed a further answer to the rule saying that he advanced in cash the loans of $25,000 and $19,000, and at the time believed they were for complainant's use and benefit; that the loan of $15,000 was made through Phil. W. Chew, and that since filing his original answer he has learned that the loan was made at the personal request of the complainant and distributed by Chew under her direction, and annexes the affidavit of said Chew. Said affidavit is that the affiant is a lawyer who negotiates loans; that in May or June, 1901, he was applied to by complainant's husband as an agent for a loan on the property in question and was informed by complainant herself that the loan was for her use, to be applied in part to pay a trust then on the property; that he obtained a loan from the defendant Keyser, of Baltimore; that the proceeds of the loan were distributed by complainant's direction in accordance with the statement annexed to his affidavit, in which distribution $500 was paid to him for services, and $11,150 to one Green, the holder of a note secured on the property; that $50 was advanced to complainant at her request, and the balance paid by checks to order of her husband by her direction, one of which she endorsed. On said 18th of July, upon hearing had on the rule and answers, an order was issued restraining said Tuck, as trustee, from selling until the 20th of October, 1905.

At the November term, 1905, the cause came on again for hearing upon the rule and the answers, as to the continuance of the restraining order, and the law questions involved were argued by counsel. Thereafter, both parties desiring that the cause should be treated as set for hearing upon bill and answers, treating the answers to the rule as answers to the bill itself, it was further considered upon briefs.

Taking the answers to be true, so far as they are responsive to the bill and are made upon knowledge, there is still a portion of the new loan of 1904 in which the complainant was not concerned, except as surety. That sum is stated to be $1,226.96, the amount due from the complainant's husband to Keyser for moneys which had been placed in his hands to be loaned, and which had been let up on unsatisfactory security. There may be some other portions of the loan standing in the same legal situation, but certainly this portion of the $19,000 note represents an old indebtedness of the husband to Keyser, and as to that portion the wife, although she signed the note jointly with the husband, was, as Keyser well knew, only an accommodation maker or surety for the husband.

The position of the complainant is that by virtue of sections 1154 and 1155 of the Code of laws for the District of Columbia she was incompetent to bind herself as surety for her husband and incompetent to charge her real estate by way of mortgage given to secure a debt of her husband. So far as the old encumbrances are concerned which rested upon the property when the $19,000 loan was made, encumbrances which were valid and enforceable liens against said real estate, she is not to be treated as a surety for her husband. Those encumbrances were to be and were discharged out of the proceeds of the loan in question, and she received the benefit. As to all that part of the loan it was, in legal effect, a loan made to her, and she is a principal. Cupp. v. Campbell, 103 Ind. 213. As to the remaining portion the situation is different, and the question is, whether, under the sections of the Code referred to, a married woman has power to mortgage her real estate to secure a debt of her husband.

It is not claimed that she is personally bound by the note given for the debt, although signed by herself and her husband jointly. If that portion of the loan had been represented by a separate note the legal situation would be exactly the same as it is now—she could not be sued upon the note itself. But it is insisted that the deed of trust given to secure the obligation of her husband upon such a note is valid, although it is given upon property which is held to the sole and separate use of the wife. This position requires us to consider the two sections referred to and determine what is the true construction to be given them.

Digitized by Google

Section 1154 declares that married women shall hold all their property of every description for their separate use as fully as if they were unmarried, and shall have power to dispose of the same as if they were unmarried. Section 1155 declares that they shall have power to engage in any business and to contract, whether engaged in business or not, and to sue and be sued in all respects as if unmarried, provided that they shall not have the power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or endorser.

On the part of the complainant the argument runs as follows: Is the deed of trust which the complainant gave to secure the debt due from her husband to Keyser a contract made by her as surety or guarantor or as accommodation maker for her husband? What is the legal effect of such a transaction? It is to enable the beneficiary to enforce the performance of the husband's obligation. A portion of the wife's property is put at the disposal of the husband's creditor in case the husband shall fail to perform his obligation. By seeing to it that the husband performs that obligation the wife relieves her property from the burden and it is hers again. The same is true when the property put at the disposal of the creditor is personal in its nature instead of real. The legal situation would have been the same if the wife had given a chattel mortgage upon her horse and carriage, or had pawned her watch and jewels at the sign of the three balls, or had made a deposit of money as security, or had given an assignment of her bank account as security. Under the powers conferred upon her by section 1154 she may, unless restrained by the provision in 1155, put all of her property, both real and personal, into the hands of her husband's creditors to be disposed of by them and applied upon her husband's debts, if she fails to see that her husband pays them. That a mortgage to secure the debt of another is in substance and effect a suretyship arrangement has been repeatedly recognized by the courts. Vries v. Nussbaum, 131 Ind. 267; Goff v. Hankins, 11 Ind. App. 456; Brown v. Will, 103 Ind. 71; Cupp v. Campbell, 103 Ind. 213; Beatie v. Calhoun, 73 Ga. 269; Bank v. Carleton, 96 Ga. 469; Gafford v. Speaker, 125 Ala. 498; Dial v. Gambril, 119 Ala. 330. What was the intention of the legislature in enacting the proviso to section 1155? Was it not to protect the property of married women from the debts of their husbands and others, and to prevent their losing their estates through becoming sureties for the debts of others, especially of their husbands? How can this purpose be accomplished if the wife is at liberty to pledge her whole estate, real and personal, for the payment of debts which are not hers? If she were personally bound by her signature to a note representing a debt of a cosigner, it would only mean that she put some unspecified part of her estate to the hazard of an execution in case a judgment should be procured against her. It is conceded that she can not do that since the enactment of this proviso, yet when she mortgages her land or pledges her personalty for another's debt she creates a direct, immediate, paramount lien upon specific property, which may be all the property she has, which may be taken and sold without the formality of a suit, judgment, and execution. Can it be that the legislature intended to protect her property from the former risks and not from the latter? It may be suggested that, under section 1154, she has power to pay her husband's debt, absolutely, if she will, and that the power to secure the payment is a less extreme exercise of authority; but it may well be supposed that the legislature considered that there was more danger of a wife hazarding her property by way of a mortgage or a contract to secure the performance by her husband of his obligation than there was of her parting at once and absolutely with her property. In making the contract as surety, or in mortgaging her property by way of suretyship, she would rely upon her husband performing his obligation, and would not really expect that she would finally lose her property. It is true that before the enactment of these sections the wife had the power to create a lien upon her real estate, by way of mortgage, in favor of her husband's creditors, although she had not the power to bind herself, personally, to pay the debt. Such was the holding in this jurisdiction and generally. Kleindinst v. Johnson, 18 D. C. 356, 365; Stephen v. Beale, 22 Wall. 329; Hitz v. Jenks, 123 U. S. 297. But the state of affairs exemplified by the decision in the Kleindinst case may well have been the very reason for the enactment of those sections. If the proviso in question is to be considered as nothing more than an exception from, or a qualification of, the new powers conferred upon the wife, then it might not be held to be a prohibition upon her mortgaging her real estate to secure the debt of another, since she had that power before; but if it is to be considered as an effort on the part of the legislature to safeguard the property of the wife against her own improvidence, or that of her husband, it seems necessary to hold that it does restrain her from encumbering her property for debts which do not concern her. Very little regard ought to be given to the fact that the provision forms a part of section 1155, instead of standing as a separate section. The intent of the legislature, as revealed by a reading of the sections relating to the same subject, is clear and must prevail.

On the part of the defendants great reliance is placed on the position in which the clause in question stands, viz.: as a part of section 1155, and various cases and authors cited with a view to showing that the proviso is limited in its operation to the section in which it occurs. Minis v. U. S., 15 Peters, 423; Savings Bank v. U. S., 19 Wall. 236; Galloway v. Harding, 23 Grattan, 547; Commonwealth v. Kelly, 177 Mass. 221; Lehigh v. Meyer, 102 Pa. St. 479. From the case in Grattan we quote the following: "There is no rule of construction by which a proviso to one section of an act can be applied to another section unless it manifestly appears by reference to the whole act that it is the intention of the legislature that such proviso should limit the operation of other sections than that to which it is appended." Where, however, it is manifest that the proviso is intended to have the broader scope, that intention must prevail. U. S. v. Babbett, 66 U. S. (1 Black), 55; Endlich on Interpretation of Stat-

Digitized by Google

utes (ed. 1888), sec. 186. All sections relating to the same subject-matter should be read and considered together. State v. Popp, 45 Md. 432, 437, 438; Lewis' Sunderland on Statutory Construction (2d edition), secs. 352 and 420. Using these principles for our guidance, let us turn again to the sections we are attempting to construe.

"In order to understand what effect the statute was intended to have we must look at the situation as it existed before the enactment of any statute enlarging the powers of married women. The contracts of married women made with reference to their separate estate and upon its faith and credit were enforced in equity against such estate. Where a statute declared that all her property should be held to her sole and separate use as if she were unmarried, equity still retained its jurisdiction to enforce her contracts against it unless the statute also provided that she might be sued at law. But where the statute did so provide she was no longer liable in equity, but was liable at law only. Pomeroy's Eq. Jur., sec. 1125; Emmons v. Harlan, 5 Mack. 521. The statute we are dealing with declares (sec. 1154) that all property of a married woman shall be held to her separate use and be subject to her disposal as if she were unmarried; but it also declares (sec. 1155) in what cases she may make contracts, and that in such cases she binds herself at law and may be sued and her property taken on execution. Her property is no longer liable in equity because, if liable at all, it is liable at law, that is, by virtue of section 1155. It is section 1155 which limits and defines her power to contract, so as to bind herself and her property; the only limitation relates to her contracts as surety, etc. But her power to dispose of her property, wholly or in part, absolutely or upon condition, is entirely separate and distinct, and is conferred by section 1154. By this section no change is made in the law as it existed without legislation, except that now all her property is in her power, whereas formerly only that part which had been conveyed strictly to her separate use was so held. If the legislature had intended to take away from her the power she already possessed to dispose of her property by mortgage, it is probable they would have adopted some other method than this method of a proviso to a section relating to a different matter. Full effect seems to be given to the proviso when it is recognized as limiting her power to contract liabilities enforceable by action and execution at law. It can hardly be held that the legislature intended to prevent her disposition of her property, conditionally, when it gave her power to do so absolutely. It is conceded that she might have conveyed her property in payment and extinguishment of her husband's debt.

"By this construction we limit the operation of the proviso to the section in which it occurs, which is the natural and ordinary way of reading it."

A discussion, bearing more or less directly upon the question here presented, will be found in Brandt on Suretyship (edition of 1905), secs. 9 and 10, as well as a full review of cases and statutes in the new edition of Pomeroy's Equity Jurisprudence, sec. 1126, and notes.

The following decisions have been consulted and found to throw some light upon the subject: Stone v. Billings, 167 Ill. 170, 180; Watson v. Thurver, 11 Mich. 457; DeVries v. Comklin, 22 Mich. 255 (opinion by Cooley, J.); Russell v. Bank, 39 Mich. 671; Harris v. McCasslan, 31 S. C. 420, 427; Hart v. Grigsby, 14 Bush (Ky.) 542, 552; Mayo v. Hutchinson, 57 Me. 546; McNeill v. Bank, 62 Neb. 608; DeVries v. Nussbaum, 131 Ind. 267; Goff v. Hankins, 11 Ind. App. 466; Brown v. Will, 103 Ind. 71; Cupp v. Campbell, 103 Ind. 213; Saulsbury et al. v. Weaver, 59 Ga. 254; Beattie v. Balhoun, 73 Ga. 269; Freeman v. Coleman, 86 Ga. 590; Bank v. Carlton, 96 Ga. 469; Williams v. Urmston, 35 Ohio St. 296; Pelzer v. Campbell, 15 S. C. 581; Sweazy v. Kammer, 51 Iowa, 642; Gafford v. Speaker, 125 Ala. 498; Dial v. Gambrel, 119 Ala. 320.

If any other questions are presented by the bill, they have not been urged in argument nor considered in deciding the case.

Accordingly the bill is dismissed with costs.

Postoffice—Issue of Fraud Orders—Conclusiveness of Finding.

In People's United States Bank v. Gilson, decided by the United States Circuit Court for the Eastern District of Missouri (140 Fed. 1), the following points were decided:

1. The use of the postal service of the United States is not a matter of right, but of privilege, limited by the statutes declaring certain classes of matter to be non-mailable, and it is competent for the Postoffice Department to determine ex parte that a concern is using the mails in conducting a scheme to defraud, in violation of the statute, and to base an order excluding it from such use on such finding. If a hearing is granted before the issuance of such an order, the concern affected may properly be required to assume the burden of proof, and to show affirmatively that its business is legitimate and honest.

[Ed. Note.—Use of mails to defraud, see note to Timmons v. United States, 30 C. C. A. 86.]

2. Under Rev. St., secs. 3929, 4041, as amended by act Sept. 19, 1890, c. 908, sec. 2, 26 Stat. 466, and act March 2, 1895, c. 191, sec. 4, 28 Stat. 964 (U. S. Comp. St. 1901, pp. 2686, 2749), which confer upon the Postmaster-General power, "upon evidence satisfactory to him" that any person or company is engaged in conducting any scheme to defraud through the mails, to direct the postmaster not to deliver registered letters nor pay money orders to such person or company, the Postmaster-General may find that a concern is using the mails in conducting a scheme to defraud which warrants the issuance of such an order on the evidence of the agents and inspectors of the department, and such a finding can not be reviewed by the courts in so far as it involves questions of fact, nor unless a plain error of law is shown.

Bankruptcy — Objections to Discharge.—A bankrupt, though entitled to file papers in resistence of specifications against his discharge, is not bound to do so. In re Hendrick, U. S. D. C., D. Conn., 138 Fed. Rep. 473.

Digitized by Google

Court of Appeals of the District of Columbia.

WILLIAM W. PAYNE ET AL, APPELLANTS,
v.
LEIGH ROBINSON, EXECUTOR, ET AL.

WILLS; BEQUEST FOR LIFE; RIGHT OF LIFE TENANT TO POSSESSION OF FUND; DUTY OF EXECUTOR TO INVEST.

1. Where there is a bequest of money to one for life, with remainder over, and no trustee is specially named, it is the duty of the executor to invest the money and pay the interest only to the person entitled for life and preserve the principal for the remainderman.
2. This rule will obtain unless the language of the will shows with reasonable certainty that the testator intended the fund should be delivered into the possession of the tenant for life.
3. Testator, after reciting that, for reasons adequate and satisfactory to him, he had separated the share of one son from those of the rest of his children, bequeathed to said son $26,000 for the joint lives of himself and wife, the same to go to the son absolutely if he survived his wife, and if she survived the fund to be held in trust by a trust company, the income to be paid her during life, with power to bequeath the same to such of testator's children or grandchildren as she may elect, and in her failure so to do the fund to be distributed among testator's next of kin. *Held*, that the will did not require the fund to be paid over to the son, but that it was the duty of the executor to hold the same during the joint lives of the son and his wife, investing it and paying over to him its income merely; in the event the son survived his wife the whole being payable to him at once, and if she survived him, then it was to be paid over to the trustee named for her life.

No. 1552. Decided December 5, 1905.

APPEAL by remaindermen from a decree of the Supreme Court of the District of Columbia, holding the Probate Court, Probate No. 12,117, directing the payment of the principal of a legacy to the life tenant. Reversed.

Mr. J. J. Darlington for the appellants.

Mr. Fred. Harper, for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

General William H. Payne, a resident of the District of Columbia, died therein on March 29, 1904, leaving a will disposing of his estate, executed January 28, 1904. By the terms of said will Leigh Robinson, Esq., was made executor thereof without security. Having procured the due probate of said will, the executor filed a petition in the Supreme Court of the District of Columbia, sitting for probate business, praying a construction of the eighth clause thereof, and that direction be given him as to the payment or retention of the legacy therein bequeathed to Arthur Morson Payne.

The eighth clause reads as follows:

"8th. In wills and codicils heretofore made I have separated the share of my son Arthur from the shares of the rest of my children for reasons adequate and satisfactory to me. The reasons still continue, and I now bequeath to my son Arthur Morson Payne the sum of twenty-six thousand dollars ($26,000), for and during the joint lives of himself and his wife Bettie; and if my said son Arthur survives his said wife, then upon her death to him absolutely; and if his said wife survive him, then upon his death I give and bequeath the said legacy to the company now having an office on G street between Fourteenth and Fifteenth streets northwest, in the city of Washington, and known as "American Security and Trust Company" in and upon the following trusts and none other—that is to say, in trust to invest, reinvest, and keep invested, and pay over the income to my said daughter-in-law Bettie for the full term of her natural life, and my said beloved and honored daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren as she may elect; and in case she does not exercise this power, then from and after her death the said legacy shall go to and be distributed among my own heirs; I should say my own next of kin."

Upon the hearing of the petition, with all the necessary parties before it, the court entered a decree directing the executor to pay over to Arthur Morson Payne the said legacy of $26,000, and ordering that the receipt of said legatee shall acquit the said executor from further liability therefor. From this decree William W. Payne, Harry F. Payne, J. Winston Payne, C. Bland Payne, and Virginia Payne Hunton, being all, save the appellee, of the next of kin of the testator, have appealed.

1. The will makes certain bequests in addition to that to Arthur Morson Payne, contained in the eighth paragraph, and in the residuary clause gives one-fourth of the remainder of the estate, after the payment of all charges and legacies, to each of the testator's four sons, William W., Henry F., John W., and Charles Bland Payne.

In the eighth paragraph the testator, after reciting that he has, for reasons adequate and satisfactory to him, separated the share of his son Arthur from the shares of the rest of his children, bequeaths to said Arthur Morson Payne the sum of $26,000, for and during the joint lives of himself and his wife Bettie. It is further provided that if said son survives his said wife, the same is bequeathed to him absolutely, but if his said wife shall survive him, then the said legacy is given in trust to the American Security and Trust Company, of the city of Washington, to invest, reinvest, and keep invested, and pay over the income to the said wife for the full term of her natural life, with power conferred upon her to bequeath the said legacy to such of the testator's children or grandchildren as she may elect. In case she does not exercise the said power, then, from and after her death, the same shall go to and be distributed among the testator's next of kin.

The question involved is, whether the executor shall at once pay over the entire amount of of this legacy to Arthur Morson Payne, and be thereby discharged; or whether he shall retain the same during the life of the legatee's wife, paying to him only the income derived therefrom.

The rule of the English chancery in respect of the custody of chattels bequeathed to one for life with remainder over, has been stated by Chancellor Kent as follows: "The interest of the party in remainder is precarious, because another has an interest in possession; and chattels, by their very nature, are exposed to abuse, loss, and destruction. It was understood to be the old rule in chancery, that the person entitled in remainder could call for security from the tenant for life, that the property should be

Digitized by Google

forthcoming at his decease, for equity regards the tenant for life as a trustee for the remainderman; but that practice has been overruled. Lord Thurlow said that the party entitled in remainder could call for the exhibition of an inventory of the property, which must be signed by the legatee for life, and deposited in court, and that is all he is ordinarily entitled to. But it is admitted that security may still be required in case of real danger, that the property may be wasted, secreted, or removed. And where there is a general bequest of a residue for life, with remainder over, the practice now is to have the property sold and converted into money by the executor, and the proceeds safely invested, and the interest thereof paid to the legatee for life." 2 Kent Com. 354. See, also, Howe v. Earl of Dartmouth, 7 Ves. 137; S. C. 2 L. C. Eq. (4 Am. Ed.) 676, and English and American notes.

In Maryland, from whence our jurisprudence is derived, the later English rule has been adopted and made to depend not so much on the difference between a specific and a residuary bequest as on whether the nature of the property is such that it can be enjoyed without being actually possessed. Evans v. Iglehart, 6 Gill. & J. 171, 196; Worten v. Burch, 2 Md. Ch. 190, 199; Miller v. Williamson, 5 Md. 219, 236; Taylor v. Brown, 64 Md. 97, 100.

The distinction that has been made between chattels of one kind and another as regards their uses, is of no importance in the determination of this case, because we have here a specific bequest of money that is clearly governed by the rule, in the absence of an express intention of the testator to the contrary. The same rule prevails in the other States, generally, where unaffected by statutes relating to wills and the administration of estates. In a case in the Supreme Judicial Court of Massachusetts, where there was a bequest of money for life with remaineer over, Chief Justice Shaw said: "I take it that nothing is now better settled than that such a gift is a gift of the interest only, and if no trustee is specially named, it is the duty of the executor to invest the money, and pay the interest only to the person entitled for life, and preserve the principal for him who is to take afterwards." Field v. Hitchcock, 17 Pick. 182. The principal in such case must be held by the executor in trust. Hooper v. Brandburg, 133 Mass. 303, 307; Ballard v. Chandler, 149 Mass. 532, 537; White v. Institute of Technology, 171 Mass. 84, 96. The same rule prevails in Virginia, of which State it was said on the argument that the testator, himself a distinguished lawyer, was a native, and also a resident until within a few years of his death. Hawthorne v. Beckwith, 89 Va. 786, 791. See, also, Matter of McDougall, 141 N. Y. 21, 27. Many other authorities may be found on appellants' brief and in Hare and Wallace's notes, 2 L. C. Eq. (4 Am. Ed.) p. 697 et seq.

That this rule is founded on broad principles of equity and sound public policy there seems to be no reasonable doubt. Under its operation the legatee, who is entitled only to the use of the fund for life, whether delivered into his possession or not, receives all the benefit to which he is justly entitled, while the interests in remainder are fully protected.

2. It remains to consider whether there is a reasonable indication in the will of an intention that the possession of this legacy, during the life of the first taker, shall not be governed by the foregoing rule. If such an intention can be fairly deduced from the language used by the testator, not only in the eighth, but in other clauses of the will, it must necessarily control. The appellees, while not denying the existence of the rule, contend that very slight indications in the will will be construed as showing that the testator intended the life tenant, rather than the executor, to be the trustee. In support, they rely especially upon the case of In re Garrity (108 Cal. 463), where the foregoing language is used in the opinion. The indications of the intention in that case, as recited in the opinion, were not slight, but rather strong.

The clause of the will was both a devise and bequest of all property, of every kind and character, to the wife, "to have, to hold, and to enjoy for the term of her natural life." The devise and bequest over was of the residue and remainder "remaining" after the termination of the life estate. It is to be noted, also, that, under the law of California, the wife was entitled absolutely to one-half of the entire estate as community property, and the husband could not deprive her of it. The powers and duties of executors are limited, also, by the civil code of that State. Influenced by all of these conditions, the court held the wife entitled to the possession. The Maryland case, also relied on to show that slight indications will be sufficient to show an intention to give the fund into the possession of the life tenant, seems, rather, to lead to a contrary conclusion. Boyd v. Boyd, 6 Gill & J., 25, 32. The will in that case consisted of a letter written by the testator to his brother, the legatee, as follows: "Ten thousand dollars, of which you are already in possession of the greatest part, is to be at your disposition and for your use, free of interest, during your natural life, but, after your death, to be invested in bank stock, in the name of, and for the account jointly and severally of the children of Jeremiah L. Boyd." Here, again, the indication of the intention was rather strong than slight. The life tenant was already in possession of the greatest part; it was declared to be at his disposition, and for his use, free of interest. There was nothing to justify the rejection of the words "free of interest," and unless the fund was intended to remain in the possession of the legatee, they would be meaningless. That this was the view taken by the court appears in the following extract from the opinion: "The language of the will is peculiarly strong and emphatical; he was to have the use and disposition of the property free of interest during his life, and in the exercise of this right of limited ownership over it, secured to him by the will, we do not think he ought to be disturbed or controlled, unless the interests of those who were the secondary objects of the testator's bounty manifestly required it." The later cases, before cited, show the adoption of the later English doctrine, that the possession shall be retained by the executor in trust, rather than committed to the tenant for life, with leave to the remaindermen to enforce security from him upon good cause shown

Digitized by Google

therefor. And, as is the case in Massachusetts, they seem to require the enforcement of that rule in the absence of a certain intention of the testator to the contrary. Viewed in the light of what we must regard as the established doctrine, the body of this legacy must be retained by the executor, unless the language of the will shows with reasonable certainty that the testator intended it should be delivered into the possession of the tenant for life. Examining with care not only the language of the particular clause, but that of the entire will also, we are unable to ascertain the existence of such a certain intention. We attach no importance to the fact that the testator mentions the share of his son Arthur in the recital, that, "for reasons adequate and satisfactory," he had separated the same from the shares of the rest of his children. The word share is used as description, and looking at the amount of the inventory, as set out in the record, it will appear that the rest of the children will receive about $26,000 each, after the discharge of all legacies and charges. The separation of this share from the others consists in the limitations imposed upon it. It is argued, however, as the testator required the fund to be given over to the American Security and Trust Company, as trustee for the legatee's wife, in the event that she shall survive him, that it must follow that he intended the life tenant to have the possession during his life. This seems to us to be conjectural only. It may be conjectured, with fully as much reason also, that the testator was informed in respect of the rule of law governing such bequests, and that having implicit confidence in his executor, to whom he had entrusted the management of a large personal estate, without requiring security therefor, and that he was aware of the relations between him and the legatee, and was therefore satisfied with the disposition of the possession for the latter's life which the law provided. Without knowing the conditions operating upon the mind of the testator, we can only further conjecture why he should have named another and independent trustee for the wife in case of her possible survival.

We also fail to find anything in the fourth clause which sheds any satisfactory light upon the intention of the testator as to the possession of the legacy given in the eighth. It simply directs the executor, in the event of the survival of the testator's wife, to invest the sum of $10,000, and pay the interest thereon to her during her life; and this fund, after her death, he is directed to restore to his estate for distribution, as provided in said will. That he should, in this instance, have directed investment specially by the executor does not, of itself, imply an intention to have the legacy in the eighth clause turned over to the first legatee therein named.

Not without some doubt, it must be confessed, we are constrained to hold that the proper construction of the will does not require the executor to pay over the fund to Arthur Morson Payne, but that it is his duty thereunder to retain the same during the life of the legatee's wife, investing it and paying over to him its income merely. In the event of his surviving her, then the whole becomes payable to him at once. If she survive him, then it is to be paid over to the trustee specially named during her life. The doubt that has been expressed is no more than that which so often arises in endeavoring to ascertain the intention of a testator where, not being express, it must be deduced from the language of his will, and nothing else.

The conclusion which we have reached will, at least, work no special injury to the tenant for life, while removing the possibility of injury to the interests in remainder.

The decree will be reversed with costs to be paid by the executor out of the assets of the estate in his hands, and the cause remanded with direction to enter a decree in conformity with this opinion.

Reversed.

Accord and Satisfaction by Marriage.

The doctrine of accord and satisfaction is not one of those which an admirer of English law would point to as exhibiting the "perfection of reason." As Sir George Jessel remarked, and as we all know, a creditor may accept anything in satisfaction of his debt except a less amount of money. He may take a horse, a canary, a tomtit, if he chooses, even a cheque, and that is accord and satisfaction, but he can not take 19*s.* 6*d.* in the pound in cash. America seems in this matter to have its anomalies too. The accord and satisfaction which in a recent case there a gentleman creditor agreed to accept was the hand of the lady who was in his debt; but, unfortunately for the lady, he agreed to accept it orally—perhaps in the very act of proposing—and though she faithfully performed her part by marrying him, this unconscionable husband proceeded after marriage to sue the lady on her original obligation. She set up accord and satisfaction. The husband replied by pleading the Statute of Frauds making contracts in consideration of marriage, where not in writing, unenforceable, and the court held such plea good. But what is the true nature of accord and satisfaction? Is it merely an agreement not to sue on the original cause of action, or is it not rather a complete extinguishment of the original cause of action? Surely the latter, both in American and English law. If so, the debt was gone so soon as the lady made satisfaction by marriage.—London Law Journal.

Bankruptcy—Effect of Filing Petition.—The filing of a bankruptcy petition and a bankruptcy adjudication held not to prevent existing creditors from proceeding to reduce their claims to judgment and execution against the holder of an unfiled chattel mortgage executed by the bankrupt. In re Beede, U. S. D. C., W. D. N. Y., 138 Fed. Rep. 441.

Death—Measure of Damages.—Under a statute authorizing a recovery for wrongful death, a recovery held limited to the pecuniary assistance the jury believes the next of kin would have received from deceased, had he lived. Hirschkovitz v. Pennsylvania R. Co., U. S. C. C., S. D. N. Y., 138 Fed. Rep. 438.

Digitized by Google

The Ohio Anti-Gambling Statute Upheld.

The United States Supreme Court, in the case of Marvin v. Trout, upheld the Ohio anti-gambling statute. In the opinion, which is by Peckham, J., it is said:

"The power of the State to enact laws to suppress gambling can not be doubted, and as a means to that end we have no doubt of its power to provide that the owner of a building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable in his property which is thus used to pay a judgment against those who won the moneys, as is provided in this statute.

"The main object of this legislation is to discourage, and, if possible, prevent gambling. The liability of the owner of the building to make good the loss sustained under the circumstances set forth in the statute was clearly part of the means resorted to by the legislature for the purpose of suppressing the evil to the public morals and welfare.

"We are aware of no provision in the Federal Constitution which prevents this kind of legislation in a State for such a purpose.

"To say that it must be limited to a provision allowing a recovery of the money by one who lost it, would be in effect to hold invalid all legislation providing for proceedings in the nature of 'qui tam' actions.

"The contention on the part of the plaintiff in error that the statute violates the Federal Constitution, because it does not provide for or permit a trial by jury, is equally without merit."

Swearing and Affirming.

Judge David D. Shelby, of the Alabama Circuit Court, was talking about the difference between swearing and affirming.

"Whatever the difference is," he said, "it is assuredly not what a certain old colored man understood it to be last week.

"The colored man, entering the witness box, said he thought he wouldn't swear. He thought he would just affirm.

"'Erastus,' I said, 'how is this? A month ago, when you appeared before me you consented readily enough to swear. Why is it that you will only affirm now?'

"'Well, your honah,' said Erastus, 'de reason am dat I specks I ain't quite so sure about de facks o' dis case as I was o' de odder.'"

Carriers—Assault on Passenger—Liability.

In Brown v. Chicago, R. I. & P. Ry., decided by the United States Circuit Court of Appeals, Eighth Circuit, in August, 1905 (139 Fed. 972), it was held that the liability or non-liability of a carrier of passengers for hire for an injury inflicted upon a passenger, by reason of a third person making an unprovoked assault upon him, depends upon the presence or absence of evidence showing the employees of the carrier either knew, or by the exercise of due care should have known, from all the attendant facts and circumstances of the particular case, that injury to the passenger was threatened or impending, and which injury, by the exercise of that high degree of care which the law requires, might have been guarded against.

Master and Servant—Injuries to Brakeman.—A railroad is not required to expressly warn trainmen that the upright sides of a bridge of standard width are dangerously near the track. Cleveland, C. C. & St. L. Ry. Co. v. Haas (Ind.), 74 N. E. Rep. 1003.

Fire Insurance—Unauthorized Companies.—A policyholder in a fire insurance company not authorized to transact business in the State is not in pari delicto with the company or its agents. Latham Mercantile & Commercial Co. v. Harrod (Kan.), 81 Pac. Rep. 214.

Ambassadors and Consuls—Liability of Surety on Bond.—The surety on the bond of a consular officer can not be held liable for the statutory penalty incurred by the principal, under Rev. St., sec. 1723, for charging excessive fees, where such fees, including the excess, have been charged against him in his account and paid to the Treasury Department. United States v. Ballantine, U. S. C. C. of App., Second Circuit, 138 Fed. Rep. 312.

Trade Unions—Breach of Contract.—A suit for breach of contract by an unincorporated local labor union held improperly brought against four of its members, individually and for themselves and others as officers and members of the union. Ehrlich v. Willenski, U. S. C. C., E. D. Penn., 138 Fed. Rep. 425.

Washington
COLLEGE OF LAW
1328 NEW YORK AVENUE
REOPENS MONDAY, OCTOBER 2,
7 P. M. PUBLIC INVITED.

Sessions From 6.30 to 9 P. M.

Open to women and men properly qualified. Three years' law course, leading to degree Bachelor of Laws. Graduate course one year, leading to degree Master of Laws. Tuition, $50 a year.

For catalogues and information apply to

ELLEN SPENCER MUSSEY,
LL. M., DEAN,
'Phone Main 4585. 416 Fifth Street N. W.

BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth st. N. W., on Monday, January 8, 1906, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 M. to 1 P. M.

H. RANDALL WEBB, *Secretary.*

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Digitized by Google

Legal Notices.

FIRST INSERTION.

Lester and Price, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Patrick McCormick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JOHN B. GEIER, 1113 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,253. Administration. [Seal.] 52-3t

Wilton J. Lambert, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.

In the Matter of the Estate of Margret Love Skerrett, Deceased. Administration, No. 13,337.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by David Milne and Frederick William Matteson, the executors named in said will, it is, this 27th day of December, 1905, ordered that notice be and the same hereby is given to **Robert G. Skerrett**, and all others concerned, to appear in said court on the **30th day of January, 1906, at 10 o'clock A. M.**, to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less [Seal] than thirty (30) days before said return day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-3t

George F. Collins, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Elizabeth A. Rawlings**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JAMES S. RAWLINGS, 1207 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,019. Admin. [Seal.] 52-3t

Walter C. Clephane, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Henry O. Towles**, late of the District of Columbia, deceased. All persons having claims against, the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. FANNIE E. TOWLES, 1124 12th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,343. Administration. [Seal.] 52-3t

SECOND INSERTION.

Worthington, Heald & Frailey, Solicitors

In the Supreme Court of the District of Columbia.

Albert F. Fox, Executor and Trustee, v. Sophia C. Pitchlyn et al. No. 23,861. Equity.

This cause being referred to me to report distribution of the fund, I shall proceed with the said reference on **Wednesday, the 10th day of January, 1906, at 10 o'clock A. M.**, at the auditor's rooms in the United States Court House in this city. All persons having claims against **Caroline M. Pitchlyn**, deceased, or her estate, are notified to present the same, with the proofs, at the said time and place. JAS. G. PAYNE, Auditor. 51-3t

Legal Notices.

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Mary E. Bryan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. SOPHIA L. KLEINDIENST, 812 23d st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,388. Adm. [Seal.] 51-3t

J. A. Sweeney, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Hugh Hurney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of December, 1905. MARY A. HURNEY, 930 25th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,223. Admn. [Seal.] 51-3t

John Lewis Smith and James B. Archer, Solicitors

In the Supreme Court of the District of Columbia.

Gertrude J. Parkinson v. Robert M. Parkinson.
No. 25,670. Equity Docket, No. ——.

The object of this suit is to obtain a divorce from the defendant from bed and board upon the ground of desertion and non-support. Provided a copy hereof be published once a week for three successive weeks in The Washington Law Reporter and Washington Post. On motion of the complainant, it is, this 12th day of December, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in [Seal] case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 51-3t

John S. Alleman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth C. Oppermann**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. ALBERT F. FOX, 911 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,221. Administration. [Seal.] 51-3t

Lancaster & Smith, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William Edward Frazier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. LAURA C. FRAZIER, 769 10th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,256. Administration. [Seal.] 51-3t

Digitized by Google

Legal Notices

W. M. Ellison, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Benjamin F. Kincannon, Deceased.
No. 13,330. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration on said estate, by Mattie A. Kincannon, it is ordered this 20th day of December, A. D. 1905, that notice be and hereby is given to **Thomas Redden**, and to all others concerned, to appear in said court on **Thursday, the 25th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal] 51-6t

Douglas & Douglas, Solicitors

In the Supreme Court of the District of Columbia.

William H. Hoeke, Complainant, v. Sidney F. Marshall et al., Defendant.
Equity No. 23,455.

Sydney F. Marshall and Charles A. Douglas, trustees, having reported to the court the sale of all the right, title, and interest of Miletus J. Wine, deceased, subject to all incumbrances, in the following described real estate, situated in the District of Columbia, to wit: All of block X; all of block 1; lots 2 to 13, both inclusive, in block 3; lots 16, and 19 to 27, both inclusive, in block 5; lot 17, in block 7; all of blocks 9, 11, 15, 17, and 18; lots 15, and 25 to 30, both inclusive, in block 19; all of block 20; lots 1, 2, 5 to 19, both inclusive, and 22 to 30, both inclusive, in blocks 21; all of blocks 22, 23, and 24; lots 1 to 37, both inclusive, and that part of lot 38, lying in the District of Columbia, in block 25; all of blocks 26, 27, 28, and 29; lots 1 to 16, both inclusive, 20 to 33, both inclusive, and those parts of lots 17, 18, 34, 35, and 36, lying in the District of Columbia, in block 30; all of blocks 31, 32, and 33; lots 1 to 11, both inclusive, and 20 to 29, both inclusive, and those parts of lots 12, 13, 14, 30, and 31, lying in the District of Columbia, in block 35; all of blocks 36, 37, 38, and 39; lots 1 to 7, both inclusive, and 20 to 24, both inclusive, and those parts of lots 8, 9, 25, 26, and 27, lying in the District of Columbia, in block 40; all of blocks 41, 42, and 43; lots 1, 2, and 20, and those parts of lots 3, 4, 5, 21, and 22, lying in the District of Columbia, in block 44; all of blocks 45 and 46; lots 1 to 14, both inclusive; 16 to 27, both inclusive, and those parts of lots 15, 28, 29, and 30, lying in the District of Columbia, in block 47; and all of blocks 49, 50, and 51—all in Charles A. McEunn's subdivision known as "Marshall," as said subdivision is recorded in the office of the surveyor for the District of Columbia, in county book No. 6, at page 39—to John P. F. White for the sum of one thousand two hundred dollars ($1,200), it is, by the court, this 15th day of December, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **16th day of January, 1906**. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. [Seal] 51-3t

Lester & Price, Solicitors

In the Supreme Court of the District of Columbia.

John A. Ruppert et al. v. Rosa Sauter et al.
In Equity, No. 25,809.

DISTRICT OF COLUMBIA, ss:

The object of this suit is to obtain a judicial construction or interpretation of the last will and testament of Agnes M. Beuchert, deceased. On motion of complainants, it is, this 12th day of December, A. D. 1905, ordered that the defendants, **Daisy Sauter, Eva Singleton, Joseph Wirth, and Antonio Rohrman**, cause their appearance to be entered herein, on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. [Seal] 51-3t

Legal Notices.

Robert P. Shealey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Thomas Montgomery**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1905. MARGARET M. MONTGOMERY, 401 st. N. E. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,280. Administration. [Seal.] 51-3t

[Filed December 11, 1905. J. R. Young, Clerk.]

Brandenburg & Brandenburg, Solicitors

In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Ele W. Tuller vs. Unknown Heirs and Devisees of Isaac N. Hansbrough, Deceased. No. 25,780, Equity.

The object of this suit is to construe the conveyance to Ele W. Tuller and Isaac N. Hansbrough, as vesting in the complainant the fee simple title, by survivorship, and of the sale of the real estate situated in the District of Columbia, and in square 113 and bounded and described as follows: being lots 15 and 16 in said square, bounded on the north by Road street, on the south by Stoddard street, on the east by Green street, and on the west by Washington street, said two lots fronting on Washington street, opposite Cook's Park. The defendants to this suit are the **unknown heirs and devisees of Isaac N. Hansbrough, deceased.** On motion of the complainant, by Brandenburg & Brandenburg, his solicitors, it is this 11th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. [Seal] Dec. 22-29, Jan. 19-26, Feb. 16-23

Geo. C. Gertman, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Robert I. Nevitt**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 8th day of January, 1906, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of December, 1905. ANNIE A. NEVITT, by Geo. C. Gertman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,522. Administration. [Seal.] 51-3t

THIRD INSERTION.

John D. Coughlan, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Marguerite M. O'Neill**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. HARRY H. NICHOLS, 500 O st. N. W.; JOHN D. COUGHLAN, 500 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,292. Administration. [Seal.] 50-3t

Digitized by Google

Legal Notices.

Barnard & Johnson, Solicitors

In the Supreme Court of the District of Columbia.
Carl L. Davis, Ralph P. Barnard, Trustee, Guy H. Johnson, Trustee, and Isadore T. Young, Complainants, v. Henry F. B. Pardon, and his Unknown Heirs, Alienees, and Devisees, Defendants. No. 25,759. In Equity, Docket 57.

The object of this suit is to reform a deed recorded in Liber J. A. S. 161, at folio 419, one of the land records of the District of Columbia, conveying part of lot numbered one (1), in square numbered seven hundred and ninety-three (793), improved by the dwelling No. 423 Fourth street southeast, in the city of Washington, District of Columbia, and to establish of record the title of the complainant thereto, subject to the deed of trust, as prayed for in the original bill in this suit. On motion of the complainant, it is by the court this 11th day of December, A. D. 1905, ordered that **Henry F. B. Pardon and his unknown heirs, alienees, and devisees** (if he be dead) cause their appearance to be entered herein on or before the first rule day occurring forty (40) days, exclusive of Sundays and legal holidays, after the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order to be published once a week for three (3) successive weeks in The Evening Star and The Washington Law Reporter next after the day of this order, good cause for shortening said [Seal] period of such publication having been shown. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-3t

E. P. Morey, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William E. Myers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. ELLWOOD P. MOREY, Wash. Loan and Trust Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,210. Administration. [Seal.] 50-3t

Worthington, Heald & Frailey, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Elizabeth A. Pyne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **11th day of December, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of December, 1905. JOHN PYNE, 157 E. Ninety-fifth st., New York; HENRY R. PYNE, 106 E. Fifty-fifth st., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,305. Admn. [Seal.] 50-3t

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.
William A. Gordon et al. v. William H. Collins et al.
Equity No. 25,185.

The object of this suit is to substitute new trustees under the will of William C. Hazel, deceased, for management of certain property in square 1256, in the city of Washington, in the District of Columbia. On motion of the complainants, it is, this 14th day of December, A. D. 1905, ordered that the defendants, **William Joseph Havenner, Mamie Gray, John Gray, Elizabeth M. Gray, and Jeanne Swart**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks. WEN- [Seal] DELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 50-3t

Legal Notices.

Chas. W. Darr and R. A. Curtin, Attorneys

Supreme Court of the District of Columbia,
Holding a Probate Court.
Estate of Mary E. Cook, Deceased.
No. 13,247. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Matthew E. Cook, it is ordered this 13th day of December, A. D. 1905, that notice be and hereby is given to **Thomas Hardesty, Reeze Hardesty, Georgiana Penn, Frank C. Farr, and Bowman Farr**, and to all others concerned, to appear in said court on **Monday, the 15th day of January, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court 50-3t

E. F. Colladay, Attorney

Supreme Court of the District of Columbia,
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louis Meyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **3d day of October, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of December, 1905. MARIA MEYER, 1744 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,125. Administration. [Seal.] 50-3t

W. E. Ambrose, Attorney

In the Supreme Court of the District of Columbia,
Holding a Probate Court.
In the Matter of the Estate of Lucinda Bailey, Deceased.
Admn. No. 12,989.

Upon hearing the report of William E. Ambrose, administrator c. t. a. of Lucinda Bailey, deceased, stating that he has sold lot seven (7) in square one thousand and one (1001) to John Appich for the sum of eighteen hundred dollars ($1,800.00), it is, this 8th day of December, 1905, ordered, adjudged, and decreed that the said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the **8th day of January, 1906**. Provided that a copy of this order be published once a week for three successive weeks in The [Seal] Washington Law Reporter prior to said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 50-3t

Hamilton & Colbert, Solicitors

In the Supreme Court of the District of Columbia.
Lee Eugene Turner et al. v. Emily A. Moxley et al.
Equity No. 16,375.

Upon consideration of the report of the trustees, this day filed, it is by this court, this 23d day of November, 1905, ordered that the trustees be, and they are hereby, authorized to accept the offer of W. Riley Deeble for the purchase of the property known as Nos. 1117, 1119, and 1121 Thirtieth street northwest, located on the north 12½ feet of lot 188, and the south 24 feet of lot 186, in square 1196, in this city and District, for the sum of $2,750 cash, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the said purchaser or his assigns. Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and [Seal] The Washington Post before said final ratification. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. L. Williams, Asst. Clerk. 50-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated numbered and bound.

Digitized by Google

Legal Notices.

E. H. Thomas, Attorney
In the Supreme Court of the District of Columbia, Holding a Probate Court.
In re Estate of Reuben B. Detrick, Deceased.
Adm. No. 12,549.

The executor having reported that he has sold premises No. 1617 Fourth street Northwest, Washington, District of Columbia, being lot numbered forty-eight (48) in square five hundred and twenty (520) according to Jesse D. Gibb's subdivision of part of square aforesaid, as recorded in Liber No. 20, folio 88, of the surveyor's office, District of Columbia, to George W. Ray, for twenty-six hundred ($2,600) dollars, all cash, less three (3%) per cent brokerage commission, it is by the court, this 12th day of December, 1905, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the **12th day of January, 1906.** Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day.

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm C. Taylor, Deputy Register of Wills. 50-3t

Hamilton & Colbert, Attorneys
In the Supreme Court of the District of Columbia, Holding the Probate Court.
In re Estate of John J. Reilly, Deceased.
Administration. No. 9121.

On consideration of the report of Julia J. Byrne, administratrix, it is, this 12th day of December, 1905, ordered that the offer of William O'Mealey, to purchase the property known as lots 31 and 32, in block 6, Buena Vista Heights, in the county of Washington, D. C., for the sum of $800.00, payable in one-third cash and the balance in one and two years, with interest at 6%, said deferred payments to be secured by deed of trust upon the property sold, be, and the same is hereby, accepted, unless cause to the contrary be shown on or before the **12th day of January, 1906.** Provided a copy of this order be published once a week for three successive weeks before said date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 50-3t

[Seal]

Hamilton & Colbert, Solicitors
Filed December 8, 1905. J. R. Young, Clerk.
In the Supreme Court of the District of Columbia, Mary Clark et al. v. The District of Columbia et al.
No. 25,461. Equity Docket No. 56.

The object of this suit is to have set aside and declared null and void certain tax sales made by the District of Columbia to the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams,** of the property known and described as part of lots one (1) and twenty-one (21), in square 581, improved by premises No. 437 and 439 2d st. S. W., Washington, D. C., and lot 35, square 471, improved by No. 616 K st. S. W., and to have certain deeds, based upon said illegal tax sales, set aside and declared dull and void. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter. On motion of the complainant, it is, this 8th day of December, A. D. 1905, ordered that the defendants, **Charles H. Wiltsie, Emily W. Wiltsie, and Mary A. Wadhams,** cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

J. Paul Earnest, Solicitor
In the Supreme Court of the District of Columbia.
Champe B. Thornton et al., Complainants, v. Jennie T. Powers et al., Defendants. Equity No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 14th day of December, A. D. 1905, ordered that said trustee be authorized to accept the offer of Mary J. Watkins to purchase at private sale for $2,541.78, lots fifteen (15) and sixteen (16), in block nine (9), of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed as reported, unless cause to the contrary be shown on or before the **14th day of January, A. D. 1906.** Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 50-3t

[Seal]

Legal Notices.

Sheehy & Hogan, Attorneys
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Peter F. Hornig,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **12th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of December, 1905. JOHN G. HORNIG, 1020 B st. N. E.; GOTTFRIED HORNIG, 937 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,326. Administration. [Seal.] 50-3t

Blair & Thom, Attorneys
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Julia R. Balch,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **11th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of December, 1905. WILLIAM C. BALCH, 903 O st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,293. Administration. [Seal.] 50-3t

Chas. H. Bauman, Attorney
Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Christian Sproesser,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of December, A. D. 1906;** otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1905. KATHARINA SPROESSER, 307 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,311. Administration. [Seal.] 50-3t

FOURTH INSERTION.

W. H. Robeson, Attorney
In the Supreme Court of the District of Columbia, Holding a Probate Court.
In the Matter of the Estate of James Smith, Deceased.
No. 11,789.
ORDER.

In the Supreme Court of the District of Columbia, holding a Probate Court: This cause coming on to be heard upon the petition of the administrator, and it appearing to the court that the administrator has appointed the **29th day of January, 1906,** for a meeting of persons entitled to distributive shares or legacies or a residue out of the estate of James Smith, the said action of the administrator in fixing said date is on this, the 1st day of December, 1905, hereby approved. And it further appearing to the court that all the heirs at law, next of kin, and distributees of the said James Smith, deceased, are non-residents of the District of Columbia, and so far as known to the said Samuel A. Putman, administrator, are named as follows: **Walter Harrington, Henry Harrington, Frank Harrington, John A. Smith, Martha Ann David, nee Woodworth, and Charles Woodworth.** And it further appearing to the court that the said Martha Ann David is a person of unsound mind and without committee or guardian, William H. Woodwell is hereby appointed a guardian ad litem for the purpose of the preservation of her interests in this proceeding, if any she have. It is further ordered that a copy of this order be mailed to said parties by said administrator by registered letter; and also that a copy of this order be published in The Washington Times and The Washington Law Reporter in each week for four successive weeks, the last publication to be at least twenty days prior to said 29th day of January, 1906. WENDELL P. STAFFORD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 49-4t

[Seal]

Digitized by Google

DIGEST OF CASES AND INDEX.

WASHINGTON LAW REPORTER. VOLUME XXXIII. 1905.

Accident Insurance.
A strain received in the ordinary course of assured's business an accident within the meaning of the policy. Patterson v. Guarantee Corpn., 274.
Interpretation of contracts of insurance. Id.
Policy construed and held that pre-existing diseased condition of assured did not preclude recovery where accidental injury was direct cause of death. Id.
The question whether the death was the result of accidental injury held for the jury. Id.
Right of medical adviser of insurer to examine body of insured held not to include right of autopsy or dissection. Id.
Acknowledgments, Defects in. See Bank v. Berlin, 726.
Administration.
Order appointing a child as administrator jointly with widow and against her protest reversed. Williams v. Williams, 132.
Probate Court may appoint either widow or child, or both jointly with their consent, but not otherwise. Id.
Admiralty.
Services rendered held salvage and not to be compensated on principle of quantum meruit. Clark Co. v. Columbia, 519.
Costs awarded to libellant. Id.
Adulteration of Drugs, Etc.
Refusal of milk dealer to sell sample. D. C. v. Garrison, 345.
Alimony Pendente Lite.
Order granting alimony and expenses of defending appeal affirmed. Sparks v. Sparks, 344.
Alleys, Opening of. See Brandenburg v. D. C., 740; Martin v. D. C., 742.
Anti-Trust Act. See Leonard v. Brewing Co., 211.
Apartment Houses. Duehay v. D. C., 422.
Appeal Bonds. See Darlington v. Turner, 114.
Appeals.
Bond for costs not required where supersedeas bond is given. Dancy v. Clark, 18.
Appeal dismissed for insufficiency of transcript of record. Neely Co. v. Browning, 152.
In case heard by trial court without a jury, questions of fact determined not reviewable on appeal. Id.
In order for appellate court to pass upon correctness of ruling of trial court the record must purport to give all the testimony bearing thereon. Klopfer v. D. C., 153.
Entry of notice of appeal not sufficient to prevent issue of execution. Byrne v. Morrison, 215.
Court of Appeals without power to order payment by husband to wife for expenses of appeal where transcript has not been filed. Morgan v. Morgan, 409.
Failure to serve citation held waived. Dowling v. Buckey, 774.
Appeals—Continued.
Allowance for counsel fees, etc., pending appeal, denied. Bernsdorff v. Bernsdorff, 775. Granted. Lane v. Lane, 775.
Power of Court of Appeals to order payment of. Id.
Appeals from Justices of the Peace.
Notice of appeal held sufficient, and approval by justice of bond required. Bundy v. U. S., 434.
Right of relator to use name of United States. Id.
Appellate Practice.
Objection not raised below. Railway Co. v. Smith, 261; Whipple v. Gaddis, 309.
In order for appellate court to determine whether there was error in directing a verdict, bill of exceptions must show that all the evidence is set forth. Rockwell v. Traction Co., 338.
Vague and indefinite exceptions to report of auditor will not be considered. Waggaman v. Earle, 420.
Attachment and Garnishment.
Sec. 473 Code, providing for attorneys' fee where judgment is in favor of garnishee, held valid. Morimura v. Samaha, 258.
Property in safe deposit box in trust company subject to. Trust Co. v. Coal Co., 738.
Trust company may be required to answer interrogatories. Id.
Attorney and Client.
Agreement by party having claim against United States giving attorney a fee of one-half the amount collected and making it a lien upon the draft, held valid. Roberts v. Consaul, 98.
Where the claimant is a non-resident and refuses either to pay the fee or empower the attorney to receive the draft, a court of equity will appoint a receiver therefor at the suit of the attorney. Id.
Bill of Review. See Perkins v. Tyrer, 55; Landram v. Jordan, 243.
Board of Medical Supervisors.
Order revoking license of physician reversed. Czarra v. Board, 470.
Bonds.
Can not be shown to have been delivered to obligee upon a condition not expressed on face of bond. Bieber v. Gans, 51.
A waiver, to be binding, must be supported by a consideration or by estoppel. Id.
In action on bond, where amount claimed is liquidated, and defendant's pleas are insufficient, judgment may be entered for amount claimed. Id.
Defense to action on bond by way of set-off. McGuire v. Gerstley, 754. See also Principal and Surety.
Building and Loan Associations. See Whelpley v. Ross, 371.
Building Contract, Construction of. Rheam v. Martin, 807.

Digitized by Google

Carriers.
Company supplying messenger service held a common carrier and liable for negligence. White v. Postal Co., 295.
It is not presumed that such a company assumes to act as common carrier of money; and its assumption of that status must be proved by party alleging it. Id.
Company held not liable for money alleged to have been lost. Id.
Cemetery.
Right of life tenant of private cemetery to grant burial permits. Hill v. Moore, 549.
Cemetery Companies.
Right of, to take devise or bequest in trust. Iglehart v. Iglehart, 711.
Champerty. See Rockwell v. Traction Co., 338.
Charitable Trusts. See University v. Taylor, 181.
Citation on Appeal. Dowling v. Buckey, 774.
Civil Service. Rules.
Porto Rican entitled to registration by board of labor employment at Navy Yard. U. S. v. Bowyer, 164.
Claims against United States. See Roberts v. Consaul, 98.
Code D. C., Sections Cited and Construed.
Secs. 31, 35. Undertaking on appeal from justice of the peace. Bundy v. U. S., 434.
Sec. 105. Service by publication. Jones v. Rutherford, 498.
Secs. 116–119, 122, 129. Probate Court, jurisdiction of. Richardson v. Daggett, 24; Guthrie v. Welch, 162.
Sec. 276. Administration, who entitled to. Williams v. Williams, 132.
Sec. 304. Letters ad colligendum. Guthrie v. Welch, 162.
Sec. 447, 456, 470. Attachment and garnishment. Trust Co. v. Coal Co., 738.
Sec. 473. Attorneys' fees in attachment proceedings. Morimura v. Samaha, 258.
Sec. 493. Acknowledgment of deeds. Bank v. Berlin, 726.
Sec. 499. When deeds to take effect. Bank v. Berlin, 726.
Sec. 605–644 (sub-ch. 4, ch. 18). Manufacturing, etc., corporations. Dancy v. Clark, 18.
Sec. 669. Right of cemetery company to take devise in trust. Iglehart v. Iglehart, 711.
Sec. 815. Criminal libel. Raymond v. U. S., 514.
Sec. 838. Embezzlement by commission merchant. Green v. U. S., 535.
Sec. 901. Pollution of waters of Potomac River. Holden v. U. S., 34.
Sec. 1074. Execution, when issued. Byrne v. Morrison, 215.
Sec. 1089. Interrogatories to garnishee. Trust Co. v. Coal Co., 738.
Sec. 1151. Separate estate of married women. Dobbins v. Thomas, 743.
Sec. 1154, 1155. Mortgage of wife's property for debt of husband. Darneille v. Tuck, 821.
Secs. 1155–1156. Powers of married women as to property. Dobbins v. Thomas, 743.
Sec. 1160. Right of husband to personal estate of deceased wife. In re estate of Harris, 290.
Sec. 1177. Husband's liability for necessaries. Dobbins v. Thomas, 743.
Code Sections—Continued.
Sec. 1214. Lien of judgment or decree. Bank v. Berlin, 726.
Sec. 1219. Notice to quit. Byrne v. Morrison, 215
Sec. 1233. Appeal in landlord and tenant cases, judgment on. Byrne v. Morrison, 215.
Secs. 1272–1282. Mandamus. Dancy v. Clark, 18.
Sec. 1538, et seq. Quo warranto. Hayes v. Burns, 200.
Sec. 1563. Set-off. McGuire v. Gerstley, 754.
Commission merchant, Embezzlement by. Green v. U. S., 535.
Condemnation proceedings. See Macfarland v. Saunders, 393; Brandenburg v. D. C., 740; Martin v. D. C., 742.
Conditional Delivery. See Bieber v. Gans, 51.
Confessions. See Ryan v. United States, 516.
Conspiracy in Restraint of Trade.
Jurisdiction of equity to enjoin. Leonard v. Brewing Co., 211.
Constitutional Law.
Constitutionality of union station act sustained. Millard v. Roberts, 198.
Contempt.
Attempt to influence juror in pending cause held a contempt committed in presence of court. McCaully v. U. S., 306.
Evidence held sufficient to establish charge. Id.
Violation of an injunction issued without an undertaking being given not a contempt of court. Drew v. Hogan, 488.
Corporations.
Right of rival claimants to corporate office to be determined by quo warranto, not by bill in equity. Hayes v. Burns, 200.
Corporations under District Code.
Mandamus will not issue to compel the recorder of deeds to receive and record certificate of incorporation where such certificate is invalid on its face. Dancy v. Clark, 18.
Corporations under sub-ch. 4, ch. 18, restricted to single business. Id.
Trustees of corporations formed thereunder must at all times be stockholders. Id.
Certificate naming five persons as trustees, three only of whom acknowledge it, fatally defective. Id.
Creditors' Bill. See Bank v. Berlin, 726.
Criminal Libel.
A written communication charging misfeasance in office not privileged. Raymond v. U. S., 514.
Criminal Procedure.
Imposition of extreme penalty imposed by law not "cruel and unusual punishment" prohibited by Eighth Amendment Const. U. S. Raymond v. U. S., 514.
Taking of additional testimony when defendant is called for sentence reversible error. Id.
In such case, however, only the judgment and sentence vacated, leaving the other proceedings unaffected. Id.
Exception to refusal of trial court to direct a verdict waived by subsequent testimony. Green v. U. S., 535.

Digitized by Google

Cross-Examination. Holtzman v. Const. Co., 531.
Damages.
Assessment of, by court. Bieber v. Gans, 51.
In personal injury cases damages to time of trial may be recovered. Hubbard v. Perlie, 482.
Evidence of medical treatment after filing suit held admissible. Id.
Damages in personal injury cases largely in discretion of jury. Holtzman v. Construction Co., 531.
The question in such cases is whether that discretion has been abused. Id.
A verdict of $10,000 held not so large as to show that it was given under the influence of mistake, passion, or prejudice. Id.
Decedents' Estates.
Primary fund for payment of debt secured by mortgage. In re Estate of Harris, 290.
Deeds.
Record not essential to validity of deed, though withheld by agreement of parties. Bunten v. Trust Co., 247.
Delivery of deed in trust held to vest legal estate in trustee, and attempted revocation ineffectual. Id.
Defective acknowledgments. Bank v. Berlin, 726.
Distribution. See Marfield v. McCurdy, 450.
Divorce.
Proof of confessions by defendant must be clear and corroborated by independent facts and circumstances. Michalowicz v. Michalowicz, 442.
Domicile. See Travers v. Reinhardt, 406.
Drunkenness as Defense. See Ryan v. U. S., 516.
Embezzlement. See Staples v. Johnson, 183; Green v. U. S., 535; Byram v. U. S., 548.
Equitable Conversion. See Vogt v. Vogt, 390; Iglehart v. Iglehart, 711.
Equitable Liens. See Roberts v. Consaul, 98; Jones v. Rutherford, 498.
Equity.
Judgment at law not merged in decree on creditor's bill to reach equitable assets. Davis v. Sanders, 101.
The rule in such case is not changed by the fact that the decree, on a cross-bill filed by defendants, apportions the liability among solvent debtors. Id.
Right to file bill of interpleader not defeated by fact that one of the defendants has brought suit in another jurisdiction. Kellogg v. Insurance Co., 103.
Sufficient showing for filing bill of interpleader held to have been made. Id.
Payment by trustee to father of beneficiary held in violation of trust, and not to relieve trustee from liability. Darlington v. Turner, 114.
Laches of complainant held not available as defense. Id.
Allowance of interest upon funds in hands of trustee held proper. Id.
The rule that undisclosed principal can not sue on sealed instrument is not applicable in equity. Whelpley v. Ross, 371.
Undisclosed principal held entitled to sue in equity to secure release of property from deed of trust. Id.
Equity—Continued.
Where promise to pay a sum above legal interest depends upon a contingency, the loan is not usurious. Id.
Agreement between a building association and a borrower held not usurious. Id.
Complainant held entitled to have his property released. Id.
Bill seeking to create express trust in land by parol dismissed. McIntosh v. Green, 423.
Deed set aside as having been executed without consideration and induced by fraud. Slater v. Rudderforth, 424.
Part performance of parol agreement sufficient to take case out of Statute of Frauds. Cherry v. Whalen, 485.
Specific performance of parol agreement. Id.
It is a condition precedent to granting an injunction that an undertaking be executed and filed. Drew v. Hogan, 488.
Requirement of undertaking not waived by defendants appearing and pleading to merits. Id.
Restraining order issued without undertaking given is inoperative and void. Id.
Evidence held insufficient to show mental incapacity sufficient to avoid a deed. Critchfield v. Easterday, 504.
Reformation of contract of insurance for mistake of fact. Church v. Ins. Co., 692.
Reformation of policy on ground that "reduced rate clause" had been inserted by accident or mistake denied. Id.
Equity Pleading and Practice.
Performance of decree before filing of bill of review excused by poverty or inability to perform decree. Perkins v. Tyrer, 55.
Refusal of motion to strike bill of review from the files for failure to perform decree equivalent to permission to file the bill without such performance. Id.
Facts charged in bill admitted by decree pro confesso, but not conclusions drawn therefrom. Id.
Failure of bill to state cause of action is error apparent on the record so as to authorize filing of bill of review. Id.
Upon demurrer to bill of review filed for error apparent on the face of the decree being overruled, defendant not entitled to plead over. Id.
Objection of multifariousness held not maintainable. Kann v. King, 147.
Conclusions of law not admitted by demurrer. Columbian University v. Taylor, 181.
Irregularity in obtaining order for service by publication waived by general appearance. Landram v. Jordan, 243.
Right to file bill of review held not lost by laches. Id.
Whether party interested but omitted from original bill is a necessary party to bill of review, quære. Id.
A decree declaring a trust created by will invalid reviewed, and the provision for complainant held valid. Id.
Power of court to vacate void judgment or decree after lapse of term. Macfarland v. Saunders, 393.
Right of complainant to dismiss bill sustained. Mertens v. Proctor, 565.

Digitized by Google

Evidence.
Admissibility of photograph of accused in homicide case. Shaffer v. U. S., 4.
Leading question, when allowance of, will be substantial error. Id.
Proof of handwriting by circumstantial evidence showing a reasonable probability that it was made by the person purporting to have done so. Id.
Proof of destruction of letter so as to admit secondary evidence of contents. Id.
Where list of witnesses furnished under section 1033 R. S. contains names of two persons at same address whose names are identical, defendant not justified in assuming both refer to same person; and both are competent witnesses. Id.
Medical witness may give opinion as to sanity of accused based upon a full personal examination. Id.
Application for admission of testator to an insane asylum and certificate of two physicians upon which commitment was made not admissible on question of testamentary capacity. Keely v. Moore, 134.
Declaration of party injured showing that he was suffering pain admissible as part of res gestæ. Patterson v. Guarantee Corpn., 274.
Statements made the day after the injury as to its cause held inadmissible. Id.
Jury not at liberty to disregard positive and uncontradicted and not inherently improbable testimony. Brown v. Petersen, 310.
Rejection of entire testimony of witness not required by her admission that she had testified falsely in one particular. Travers v. Reinhardt, 406.
Where defendant makes confession, erroneous admission of evidence is immaterial. Ryan v. U. S., 516.
Cross-examination to show bias. Holtzman v. Construction Co., 531.
Admission of incompetent evidence held waived. Id.
Evidence as to pecuniary condition of plaintiff in action for libel. Times Co. v. Downey, 770.
Excessive Damages. See Holtzman v. Construction Co., 531.
Execution, Issue of. See Byrne v. Morrison, 215.
Execution.
Notice of claim by third person to chattels levied upon given on day of sale held sufficient. Brown v. Petersen, 310.
Person in possession of property under a lien has right to hold same until lien is paid. Id.
Right of landlord as to property held by him as security for rent. Id.
Executors and Administrators. See Marfield v. McCurdy, 450.
Fellow Servants. See Looney v. Railroad, 39.
Fire Insurance.
Condition against chattel mortgage held broken by execution of chattel deed of trust. Hunt v. Insurance Co., 154.
Insertion of "reduced rate clause" in policy held not shown due to accident or mistake. Church v. Insurance Co., 692.
Foreign Judgments. See Karrick v. Wetmore, 435.
Forfeitures. See Kann v. King, 147.
Fraternal Beneficial Associations.
Forfeiture and disconnection for non-payment of assessment. Golden Cross v. Bernard, 722.
Reinstatement on payment of assessment and fine a personal privilege, and does not survive to legal representative. Id.
Fraudulent Conveyances.
In case of sale by vendor to defraud creditors purchaser has burden of proving payment of consideration. Morimura v. Samaha, 258.
Creditors attacking sale have burden of showing notice by purchaser of vendor's fraud. Id.
Bad faith on part of purchaser may exist where facts and circumstances of transaction are such as to put him on inquiry. Id.
If, in such case, he fail to make inquiry, his situation is not different in law from one who has actual notice of the fraud. Id.
Homicide.
Photograph of accused as evidence. Shaffer v. United States, 4.
Charge of court as to weight to be given opinions of lay witnesses as to sanity held proper. Id.
Husband and Wife.
Court has no power to require husband to pay costs of appeal where transcript has not been filed in this court. Morgan v. Morgan, 409.
Wife can not be member with her husband in a partnership. Norwood v. Francis, 455.
Provision in will for wife to be liberally construed. Montgomery v. Brown, 468.
Husband not released from liability for necessaries by Sec. 1177 Code. Dobbins v. Thomas, 743.
Agency of husband for wife not implied from marriage relation. Rheam v. Martin, 807.
Independent Contractor. See Rheam v. Martin, 807.
Indian Tribes.
Powers of Congress over tribal property. Naganab v. Hitchcock, 248.
Indictment and Information. See Holden v. U. S., 34; U. S. v. Johnson, 776.
Infants, Disaffirmance of Contract. Slater v. Rudderforth, 424.
Injunction.
Effect of failure to give bond. Drew v. Hogan, 488.
Insolvent Corporations.
Creditors held not entitled to enforce, in a single suit against a number of subscribers for the stock of the corporation, a liability for the unpaid portion of their subscriptions. Bank v. Saville, 178.
Interest. See Darlington v. Turner, 114.
Interpleader. See Kellogg v. Insurance Co., 103.
Joint Stock Companies.
Members of unincorporated joint stock company liable as partners. Norwood v. Francis, 455.
Member giving notice of withdrawal as provided in by-laws not liable to subsequent creditors. Id.
Married woman owning stock in such company liable as other shareholders. Id.
Married woman can not become a member with her husband in such a partnership, and is not liable for its debts. Id.

Digitized by Google

Joint Stock Companies—Continued.
Whether a member had withdrawn so as to relieve himself from liability as a partner held for the jury. Bradford v. Benefit Assn., 786.
Judgments.
Not merged in decree on creditor's bill to reach equitable assets. Davis v. Sanders, 101.
Order striking out dismissal of cause without notice to defendant held void. Karrick v. Wetmore, 435.
Judgment, Lien of.
Sec. 1214 Code, making judgments a lien on equitable interests, does not operate in favor of judgments existing when Code went into effect. Bank v. Berlin, 726.
Filing of bill by judgment creditor to reach equitable interest of debtor gives him a lien on such interest. Id.
Such lien is superior to the right of an assignee from the judgment debtor whose assignment was recorded subsequent to the filing of the bill. Id.
Landlord and Tenant.
No implied covenant on part of landlord that premises are tenantable. Howell v. Schneider, 82.
Parol promise to repair held not to extend to other repairs than those pointed out by tenant after inspection of premises. Id.
Landlord not liable for injuries caused by negligent construction of water box in bathroom where he has no knowledge of dangerous condition and makes no representation in relation thereto. Id.
Forfeiture by a lessee for non-payment of taxes as required by lease, relieved against under the circumstances of the case. Kann v. King, 147.
Notice to quit need not specify date of termination of lease. Byrne v. Morrison, 215.
Receipt of rent for current month pending notice to quit not waiver of notice. Id.
Motion in arrest of judgment on ground of irregularity in verdict properly denied. Id.
Unless suspended by agreement, injunction, or appeal, writ of execution may issue immediately on rendition of judgment. Id.
Entry of notice of appeal will not suspend issue of execution. Id.
Right of landlord as to property held as security for rent. Brown v. Petersen, 310.
Larceny.
Drunkenness, unless to the extent of rendering accused incapable of forming intent to steal, not a defense. Ryan v. U. S., 516.
Such evidence immaterial where, on becoming sober, defendant, instead of returning goods, converted them to his own use. Id.
Evidence held to show commission of larceny in this District. Id.
Where accused has made confession, erroneous admission of evidence is immaterial, Id.
Letters ad Colligendum. See Guthrie v. Welch, 162.
Libel.
Of public officer. Raymond v. U. S., 514.
Privileged communications. Best v. Walker, 610.
Newspaper article held libelous per se. Times Co. v. Downey, 770.
Libel—Continued.
Mental suffering an element of recoverable damages in action for libel. Id.
Evidence that plaintiff had no parents living and was dependent on her own exertions held competent. Id.
License Taxes.
The term "claim agents" in personal tax law held too indefinite to be enforced. Lockwood v. D. C., 131.
Wholesale dealer in wood and coal not liable to license tax imposed by act of 1902 on "building and other contractors." D. C. v. Chapman, 232.
Right of party paying under protest to recover. Id.
Master bricklayer not subject to license tax. Wilson v. D. C., 502.
Liens. See Brown v. Petersen, 310.
Limitations, Statute of. Jackson v. Emmons, 165.
Lobbying Services. Waggaman v. Earle, 420.
Malicious Prosecution.
Plaintiff has burden of proving both malice and want of probable cause. Staples v. Johnson, 183.
Retention of money under claim of right made in good faith not embezzlement. Id.
Refusal to direct a verdict for defendant held proper. Id.
Mandamus.
Use of name of United States in petition for mandamus a mere formality. Dancy v. Clark, 18.
Appeals in Patent Office proceedings. Allen v. U. S., 354.
To compel approval of appeal bond. Bundy v. U. S., 434.
Marriage.
Whether a valid marriage existed between parties domiciled in New Jersey at death of one of them depends on laws of that State. Travers v. Reinhardt, 406.
Evidence held sufficient to show valid marriage under laws of that State. Id.
Married Women.
Can not be member of partnership with husband. Norwood v. Francis, 455.
Power of, to exchange property. Dobbins v. Thomas, 743.
Liability of married woman for necessaries. Id.
Mortgage of separate estate for husband's debt. Darneille v. Tuck, 821.
Master and Servant.
A private watchman, commissioned but without compensation as a special policeman, is not precluded from recovering for injuries caused by a defective sidewalk. Klopfer v. D. C., 153.
Duty of master to provide suitable and reasonably safe machinery. Butler v. Frazee, 387.
Servant has burden of showing negligence on the part of master. Id.
When servant has notice of defect in machinery, and continues in its use, he assumes the risk of injury. Id.
Mental Incapacity. See Critchfield v. Easterday, 504.
Merger. See Davis v. Sanders, 101.

Digitized by Google

Messenger Service. See White v. Postal Co., 295.
Mistake. See Church v. Insurance Co., 692.
Multifariousness. See Kann v. King, 147; Bank v. Saville, 178.
Negligence.
When a question of law for the court. Ward v. D. C., 71.
In action against District for injuries caused by the fall of a tree being removed by its agents, question of negligence held for the jury. Id.
Act done in presence of impending danger may not be contributory negligence. Id.
Liability of owner of building for negligence of contractor in removing refuse material. Swart v. Justh, 149.
Contributory negligence of plaintiff will not preclude recovery if defendant by reasonable care, might have avoided the consequence of such negligence. Hawley v. Railway Co., 150.
Question of negligence held one for the jury to determine. Id.
Water plug in parking. Doty v. D. C., 293.
District held not liable for negligence of railroad company in constructing its tracks. Smith v. D. C., 418.
New Trial. Holtzman v. Construction Co., 531.
Notice to Quit. See Byrne v. Morrison, 215.
Panama Canal.
Power of United States to construct. Wilson v. Shaw, 328.
Parties. See Landram v. Jordan, 243.
Partnership. See Norwood v. Francis, 455.
Part Performance. Cherry v. Whalen, 485.
Patent Office Practice.
Interlocutory decisions in interference proceedings not appealable. Allen v. U. S., 354.
Perjury.
False statement in application for civil service examination. Johnson v. U. S., 679.
Photographs as Evidence. Shaffer v. U. S., 4.
Physicians, Revocation of License of. See Czarra v. Board, 470.
Pleading and Practice.
In action on bond pleas setting up a parol condition not expressed on its face held bad. Bieber v. Gans, 51.
General exception to entire charge of court held insufficient. McDermott v. Severe, 226.
Declaration in general assumpsit need not allege promise to pay. Laundry Co. v. Miller, 773.
Police Regulations.
Evidence held insufficient to support a conviction for violation of regulation as to hackmen. Barnes v. D. C., 53.
Regulations as to occupation of sidewalks, etc., by farmers and truckmen held valid. Taylor v. D. C., 67.
Obstructing streets. Gassenheimer v. D. C., 197.
Regulation for removal of snow and ice from sidewalks held invalid. Coughlin v. D. C., 376.
Evidence insufficient to support conviction for obstructing street. Probey v. D. C., 482.
Discharge of firearms within city limits. D. C. v. Lewis, 691.
Storage of gasoline, etc. Cahill v. D. C., 759.
Potomac River, Pollution of.
Discharge by gas company of refuse water containing percentage of tar and oil, a violation of sec. 901 Code. Holden v. U. S., 34.
Principal and Agent.
Payment of money to agent. Held v. Walker, 440.
Principal and Surety.
Right of surety to set-off damages for breach of contract between creditor and principal. McGuire v. Gerstley, 754.
Surety not discharged by failure of obligee to notify him of principal's default. Clark v. Gerstley, 758.
In order for it to discharge the surety an extension of time must be for a valuable consideration and for a definite period. Id.
Privilege. Raymond v. U. S., 514.
Probate Court.
Without jurisdiction to determine question of title to and control possession of property. Richardson v. Daggett, 24.
Has jurisdiction to remove a collector on ground of interest in result of litigation. Guthrie v. Welch, 162.
Proximate Cause. See Patterson v. Guarantee Corpn., 274.
Public Schools.
Board of school trustees without power to bind District to pay for services rendered schools in absence of express authority or of appropriation to pay for such services. Myers v. D. C., 290.
Quo Warranto. See Hayes v. Burns, 206.
Railways.
Liability for negligence in construction and maintenance of track at crossing. McDermott v. Severe, 226.
Negligence of motorman in failing to get car under control in time to stop it after seeing plaintiff had caught his foot at the crossing held for the jury. Id.
Prospective pecuniary injury to child from loss of leg properly taken into account in estimating damages. Id.
Whether passenger on street-car is negligent in protruding arm from car is for the jury. Railway Co. v. Smith, 261.
Negligence of railway company in using cars which almost touch in passing. Id.
Carrier must so construct its road and use such equipment as not to endanger safety of passengers. Id.
Recorder of Deeds. Dancy v. Clark, 18.
Recoupment. See McGuire v. Gerstley, 754.
Release.
In action for personal injuries plaintiff may avoid effect of release pleaded in bar by showing fraud in its procurement. Rockwell v. Traction Co., 338.
To avoid release for fraud plaintiff must return or offer to return the consideration received; but tender made after release is pleaded is sufficient. Id.
Evidence on question of fraud held to require its submission to the jury. Id.
Remarks of Counsel. See Holtzman v. Construction Co., 531; Bradford v. Benefit Assn., 786.
Respondeat Superior. Parks v. University, 579.
Resulting Trusts. University v. Taylor, 181.

Digitized by Google

Rule in Shelly's Case. See Vogt v. Vogt, 390; Slater v. Rudderforth, 424.
Sales of Merchandise in Bulk.
New York statute regulating sales of merchandise in bulk unconstitutional. Wright v. Hart (N. Y.), 658.
Savings Bank Deposits.
Deposit held to create trust. Littig v. Vestry (Md.), 567.
Second Class Mail Matter.
Joint stock company conducting correspondence college for profit not an institution of learning within the meaning of the act of 1894. College v. Wynne, 230.
Service by Publication. See Jones v. Rutherford, 498.
Set-off.
Requisites of plea of set-off. McGuire v. Gerstly, 754.
Damages for tort can not be made basis of plea of set-off. Id.
Seventy-third Rule. See Dobbins v. Thomas, 743; Laundry Co. v. Miller, 773.
Sidewalks, Obstructions in.
Stepping stone near curb not an unlawful obstruction. Wolff v. D. C., 137.
District not charged with duty to so light streets as to show the presence of such stone on sidewalk. Id.
Liability of District for injuries caused by falling over water plug in parking, Doty v. D. C., 293.
Smoke Law.
Liability of public officer for violation of. Palmer v. D. C., 402.
Apartment house not a private residence within the meaning of the smoke law. Duehay v. D. C., 422.
Specific Performance. Cherry v. Whalen, 485.
Street Railways.
Relations of employees of two companies operated by same management. Looney v. Railroad Co., 39.
Negligence, if any, held that of fellow servant, precluding a recovery. Id.
Taxation.
Assessment of property in name of a decedent instead of in name of those deriving title from him not a compliance with law. Kann v. King, 147.
Failure to assess in name of new owner is an irregularity which will vitiate a tax sale. Id.
Report of tax sale held not to comply with requirements of law, and the sale and deed thereunder held void. Id.
Certiorari to review a tax sale properly quashed. Guy v. D. C., 165.
Trial of Right of Property. See Brown v. Petersen, 310.
Trust Company.
Property in safe deposit box subject to attachment. Trust Co. v. Coal Co., 738.
Trusts and Trustees.
Payment by trustee to person other than beneficiary. Darlington v. Turner, 114.
In case of several independent trusts, one legal and the others illegal, the estate of the trustees will be upheld so far as the valid trust is concerned. Landram v. Jordan, 243.
Trusts and Trustees—Continued.
A trust created by will construed valid so far as estate given complainant was concerned. Id.
One of several trustees may act as agent of all in cases of emergency, and there may be ratification by all of the act of one. Ubhoff v. Brandenburg, 473.
Agreement by one of two trustees held binding on both. Id.
United States Mails.
Embezzlement of decoy letter held punishable under sections 5467–5468, R. S. Byram v. U. S., 458.
Usury. See Whelpley v. Ross, 371.
Vagrancy. See Fields v. D. C., 501.
Waiver. See Bieber v. Gans, 51.
Wills.
Certificate of vice-consul held sufficient as an attestation. Keely v. Moore, 134.
An instruction upon the question of testamentary capacity held correct. Id.
In construing a will the policy of the law in favor of the heir yields to the clear intent of testator. McCaffrey v. Manogue, 167.
Devise held to pass estate in fee and not merely life estate. Id.
In construing wills courts are not required to adhere strictly to precedents. Id.
Devise to incorporated educational institution held to create valid charitable trust. Columbian University v. Taylor, 181.
Intent of testator is first and great rule in interpreting will. Cruit v. Owen, 323.
Devise in trust construed. Id.
Where a present interest in remainder, to be enjoyed in futuro, passes to a certain person, the remainder is vested. Vogt v. Vogt, 390.
Rule in Shelly's case inapplicable where one estate is equitable and the other legal. Id.
A trust estate is not to continue beyond time required for purposes of trust. Id.
Rule in Shelly's case held inapplicable. Id.
Construction of devise. Travers v. Reinhardt, 406.
Devise in trust for married woman for life and to her lawful issue at death held not within rule in Shelly's case. Slater v. Rudderforth, 424.
Provision for compensation of executor construed. Marfield v. McCurdy, 450.
Distribution of principal before period fixed by will denied. Id.
Intent of testator must prevail if consistent with law. Montgomery v. Brown, 468.
Provision for benefit of wife to be liberally construed. Id.
Estate given by one clause of will can not be taken away by raising a doubt from other clauses, but only by express words or clear implication. Id.
Bequest to wife held to give her entire estate in life insurance the subject thereof. Id.
Bequest to erect monument held valid. Iglehart v. Iglehart, 711.
Devise to foreign cemetery held valid. Id.
In case of bequest of money for life, with remainder over, it is executor's duty to invest fund and pay only income to life tenant. Payne v. Robinson, 825.
Witnesses. U. S. v. Shaffer, 4.

Digitized by Google

Editorial Notes, Etc.

Page
Accident insurance—proximate cause..... 785
Accounting by justices of the peace..... 49
Administration of estates of absentees..... 481
Adverse possession 513
Agent, competency of, to testify as to extent and character of his authority..... 529
Amendment of Common Law Rule 2, relating to attorneys..... 370
Amendment of general incorporation law of District..... 66
Amendment to rules of justices of the peace..... 257
American Bar Association..... 466
Antecedent debt as consideration for note... 753
Apartment house—liability of owner for injury to child of tenant..... 561
Appeals from justices of the peace—right of appellant to dismiss appeal..... 721
Bad dreams as an element of damage..... 433
Bankruptcy—right of trustee as to property incumbered by trust deed..... 529
Banks—stockholder's liability..... 33
Carriers—injury to passenger—negligence of conductor..... 305
Charges of professional misconduct..... 193
Children as witnesses..... 449
Competency of insane person as witness..... 417
Conditional sales—remedy of vendor on refusal of vendee to accept goods..... 721
Conduct of party as admission..... 753
Constitutionality of act regulating sales of merchandise in bulk..... 657
Contract for sale of real estate—enforcement by undisclosed principal..... 578
Corporations under District laws—forfeiture of charter..... 289
Criminal procedure—questioning jury as to how they are divided..... 129
Cumulative sentences in Police Court..... 33
Damage for lowering grade of street..... 641
Decedents' estates—primary fund for payment of mortgage debt..... 161
Ecclesiastical controversies..... 497
Ejection of trespasser from street-car..... 417
Elevator accident—negligence..... 550
Equitable estoppel..... 289
Evidence—res gestæ—statement by conductor 618
False representations to commercial agency 433
Fixtures—rights of mortgagee without notice of agreement reserving ownership.... 129
Foreign corporations—service of process... 449
Foreign judgments—right of assignee to sue in his own name denied..... 337
Fraternal benefit associations — by-laws adopted after issue of certificate..... 289
Fraud in sale of land—caveat emptor..... 689
Fraudulent procurement of note..... 353
Homicide—presumption of sanity..... 113
Incorporations under District laws..... 33
Indirect advertisement by lawyers..... 578
In Memoriam—Andrew Brown Duvall..... 707
In Memoriam—Andrew Wylie..... 803
In Memoriam—Charles C. Cole..... 546
In Memoriam—Franklin H. Mackey..... 194
In Memoriam—William John Miller..... 818
Insane delusions—belief in particular religious creed..... 49
Iowa cigarette cases 513
Judgments—jurisdiction over garnishee temporarily within State—notice..... 465
Labor unions..... 641
Landlord and tenant—covenant to keep premises in good repair..... 50
Legal effect of use of terms "wilful, abandoned, reckless, and wanton" neglect..... 568
Liability of master for failure to employ competent servants..... 257
License tax—contractors..... 113
Limitation of actions—no provision of Code applicable to foreign judgments..... 385
Married women—mortgage of separate property for husband's debt..... 801
Master and servant—danger from separate work of fellow servant..... 353
Master and servant—liability of master for acts of vice-principal..... 97
Minor streets, opening of..... 802
Mr. Justice Louis E. McComas..... 401
Mortgages—priority..... 641
Note—bona fide purchaser—discount by bank..... 305
Ohio anti-gambling statute upheld..... 828
Organization and management of business corporations..... 65
Personal injury—contributory negligence—promptness in leaving car..... 612
Present system of transferring stock..... 721
Railroads—injury to brakemen—automatic couplers 17
Real estate brokers—compensation where property is exchanged..... 97
Renewal by implication of contract of employment for definite time 593
Retirement of Chief Justice Alvey..... 2
Retirement of Mr. Justice Morris..... 401
Riding on platform of crowded railway car. 66
Right of life tenant of private cemetery to grant burial permits..... 545
Shopkeeper—liability for loss of garment... 785
Stock dividend as income..... 513
Stockholder's liability to creditors..... 114
Street railroads—care in equipping cars..... 513
Suretyship—change of contract..... 337
Unfair competition—use of family name.... 353
Theatre tickets..... 802
The right of privacy..... 337

Communications.

A Municipal Court for the District of Columbia. Henry Randall Webb..... 626
An act to prevent fraudulent sales of merchandise in the District of Columbia..... 680
Citizenship by marriage—a bill to restore American born widows of aliens to citizenship—attitude of State Department. Crammond Kennedy..... 73
Reduction in number of justices of the peace. S. R. Church..... 242

Legal Miscellany.

Accord and satisfaction by marriage..... 827
Architect's plans..... 649
Bankruptcy Law, The..... 681
Bankrupt Law, The—Report to American Bar Association..... 562
Celebrated "steer case," The 573

Digitized by Google

Page
Compromise in the jury box 794
Court, power to act on its own motion..... 666
Disqualification of executors on other than statutory grounds—personal unfitness..... 571
Interstate rendition of paroled convict..... 616
In the matter of clothes..... 697
Ironies of Lord Justice Knight-Bruce 585
Marshaling, The equity of..... 572
Microscopic study of pen and ink lines. Marshall D. Ewell..... 584
Mistaken identity 647
New trials after verdicts of acquittal..... 26
Parental liability for children's crimes..... 794
Pensioning judges in England..... 566
Prohibition of marriage of epileptics..... 645
Provocation in mitigation of damages..... 644
Reciprocal rights of street railway companies and general public in streets..... 88
Right of jurors to consider their own knowledge and experience..... 642
Sentimental damages..... 588
"Strikes" against estate 633
The motorist and the law..... 696
Uniform divorce laws..... 587
Who are passengers..... 265

Notes of Decisions.

Accident insurance—burden of proof..... 761
Accident insurance—exception 426
Accident insurance—expense of defending suit..... 138
Accident insurance—misrepresentations..... 11
Accident insurance—total disability..... 554
Accident insurance.....297, 360, 651
Accord and satisfaction.....51, 599
Accord and satisfaction—conditional tender..... 794
Accord and satisfaction—written receipt..... 761
Admiralty—maritime contracts 102
Adverse possession.....170, 297, 362, 730
Adverse possession—abandonment..... 649
Adverse possession—subsequent survey..... 133
Aerolite, title to..... 583
Agent—authority to execute notes..... 667
Agent—waiver of provisions of policy..... 667
Alteration of instruments..... 362
Animals—Liability of owner for personal injury inflicted by..... 597
Arrest—what constitutes offense of rescue.. 105
Assault—elements of damages..... 27
Assault—unauthorized surgical operation... 632
Attachment, grounds of..... 459
Attorney and client—act of attorney..... 390
Automobile accidents—liability..... 386
Automobiles—duty of driver to slow down when turning corners..... 553
Automobiles—judicial notice of..... 793
Bailments..... 410
Bankruptcy.....89, 186, 282, 362, 378, 410, 603, 689, 725, 827
Bankruptcy—assignment of future wages... 713
Bankruptcy—composition—ratification 343
Bankruptcy—deposit in bank..... 104
Bankruptcy—insolvent partnership..... 596
Bankruptcy — involuntary petition — expenses of receivership..... 820
Bankruptcy—mortgage lien..... 491
Bankruptcy—proceeds of life insurance..... 713
Bankruptcy—set-off—damages for tort..... 663
Banks and banking 59, 155, 169, 346, 651, 689
Banks—checks as payment..... 122
Banks—collection of drafts—insolvency..... 266
Banks—deposit by gambler..... 121
Banks—fraud of officer..... 713
Banks—purchasing stock of other banks... 130
Bank—loan to insolvent..... 58
Bank deposit—certificate—gift..... 50
Benefit societies..... 347
Bills and notes 170, 282, 378, 603, 689, 730, 745
Bills and notes—alteration 777
Bills and notes—failure of consideration..... 667
Bills and notes—negotiability..... 713
Bills and notes—parol evidence..... 614
Bills and notes—procurement by fraud 569
Bills and notes—transaction with decedent. 713
Bill of lading—value—damages 53
Bloodhounds..... 507
Boarding-house keepers and stolen property..... 583
Brokers.....266, 378
Brokers—acting for both parties..... 426
Builders' bond—mortgage—condition..... 635
Carrier and passenger—when relation begins—negligence..... 536
Carriers.....58, 130, 170, 282, 540, 725, 729, 745, 811
Carriers—alighting from car..... 75
Carriers—assault on passenger..... 828
Carriers—damages for wrongful expulsion 75
Carriers—collision—burden of proof..... 647
Carriers—damages for loss of goods..... 794
Carriers—duty to look and listen..... 138
Carriers—duty to stop at station..... 761
Carriers—injury to belated passengers..... 66
Carriers—injury to passenger.....3, 454, 667
Carriers—jewelry as baggage..... 667
Carriers—jumping from moving train..... 587
Carriers—limiting liability..... 102
Carriers—loss of jewelry in stateroom..... 507
Carriers—negligence of connecting carrier.. 667
Carriers—passenger elevator..... 785
Carriers—presumption of negligence..... 70
Carriers—prospective passengers..... 98
Carriers—who are passengers..... 793
Carriers of freight—unsuitable cars—selection by shipper..... 26
Certificate of deposit—bona fide holder..... 793
Checks—stoppage of payment—disregard by bank—waiver..... 506
Collision—electric car—negligence..... 578
Collision—street-car—negligence..... 596
Consequential damages..... 507
Contract of hiring—breach—damages..... 90
Contracts—rescission for non-performance. 729
Contracts—tender after action brought..... 386
Contracts—time for performance..... 616
Contributory negligence—last chance..... 664
Conversion of household goods—damages... 585
Copyright 169, 603
Copyright—penalty for infringement..... 570
Corporations.....312, 603, 729
Corporations—agent's authority—usage..... 346
Corporations—authority to execute notes... 90
Corporations—purchase of stock by directors..... 104
Corporations—trust deeds passing property to trustee in bankruptcy..... 581
Corporation—validity of debts..... 667
Damages—injury to child..... 105

Digitized by Google

Page
Damages, measure of, for conversion by stock-brokers 599
Death—limitations on action for 459
Death—master's liability for negligence of driver 459
Deeds—delivery 465
Deeds—sufficiency of delivery 427
Defective machinery—negligence 650
Definition of "papers read in evidence" 792
Depositions—right to compel answers 597
Discharge of employee for disobedience of reasonable requirement 746
Divorce—benefit certificate 104
Dying declarations 539, 586
Elevator accident—contributory negligence 523
Eminent domain—damages 507
Employee—negligence of master 598
Employee—negligence of third person 598
Employer's liability—Baltimore fire 793
Employer's liability for tort 90
Estoppel, how created 361
Escrow—delivery after grantor's death 761
Escrow—failure to deliver 761
Escrow—performance of condition 530
Evidence 100, 346, 360, 745
Evidence—res gestæ 82
Evidence—varying accommodation note 70
Executors—direction to erect monument 646
Fidelity bonds—notice of default 663
Fire insurance—breach of condition 100
Fraud—false representations 90
Gifts causa mortis 651
Handwriting—evidence—testing witness 650
Homicide 169, 297, 651
Homicide—degrees of offense 503
Homicide—persons engaged in affray 503
Husband and wife 169, 361
Husband and wife—gifts 371
Husband and wife—medical services 155
Imputed negligence of parent or guardian 615
Indemnity insurance—extent of liability 58
Innkeeper, Liability of 600
Insurance 98, 282, 297, 361, 540, 745, 828
Insurance—agent's authority 90
Insurance—apportionment of assessment 186
Insurance—breach of warranty 572
Insurance—change of location — increased premium 757
Insurance—construction of "loss payable" indorsement—stipulation against chattel mortgage 564
Insurance—loss payable to mortgagee 98
Insurance—referee—waiver 746
Interest—method of computing 746
Landlord—injury to third persons 450
Landlord and tenant 122, 170, 282, 297, 650
Landlord and tenant—rent not due 441
Landlord and tenant—rights of lessee 454
Landlord and tenant—sublease 155
Law partnership—purchase of books 578
Lease—covenant as to insurance 426
Lease—remodeling building 346
Liability for false imprisonment 792
Liability of landlord for repairs 646
Life insurance—assignment of policy 777
Life insurance—incontestability clause 777
Life insurance—suicide 745
Limitations—new promise 454
Limitations—part payment 12
Malicious prosecution—probable cause 450
Marriage brokerage contract 557

Page
Marriage by estoppel 507
Marriage—payment of debt 491
Master and servant 59, 138, 169, 297, 378, 651, 682, 689, 729, 511, 828
Master and servant—apprentice—discharge for disobedience 42
Master and servant—assumed risk 552
Master and servant—duty of master 667
Master and servant—fellow servants—telegraph operator and train crew—res ipsa loquitur 760
Master and servant—fellow servants 794
Master and servant—infant 761
Master—malicious act of servant 793
Master and servant—procuring discharge of non-union man 770
Master and servant—release 761
Master and servant—safe place to work 713
Master and servant—safe appliances 441, 427, 450
Master and servant—tort of servant 777
Master and servant—transitory perils 459
Mechanics' lien—change in ownership 503
Municipal corporations—official acts 667
Murder—inciting to suicide 104
National banks—comptroller's assessment 266
Negligence 105, 312, 361, 410, 540, 689, 811
Negligence—automobile—liabilty of owner 523
Negligence—dangerous premises 522
Negligence—defective streets 467
Negligence—driving over child in street 427
Negligence—duty to muffle sound 475
Negligence—dynamite—children 596
Negligence—independent contractor 104
Negligence—injury to licensee 122, 667
Negligence—injury to servant of independent contractor 667
Negligence of parent as defense to action for injuries to child 185
Negligence of vice-principal 104
Negligence—other negligent acts 713
Negligence—res ipsa loquitur 475
Negligence—right of workman in place of danger to expect customary warning 602
Nonsuit—reopening case 491
Note—negotiability—definite amount 392
Nuisance, abatement of 713
Opinion evidence 3
Ownership of property in case of robbery 698
Partnership 170, 361, 713
Partnership—estate of deceased partner 713
Payment—receipt—duress 682
Physicians—contract for services—right to practice 41
Posthumous libel 599
Postoffice Department—fraud orders 824
Powers—purchase from life tenant 722
Principal and agent 313, 806
Principal and surety 170, 616
Principal and surety—contribution 353
Railroad accident—negligence 596, 629
Railroad accidents—shipper's pass 386
Railroad employee—assumption of risk 523
Railroads—injury to child on track 353
Railroads — negligence — obeying conductor's direction 616
Railroad yards—injury to trespasser 598
Receivers—attorneys' fees 634
Release, construction of—general and particular words 475
Rescission—restoration of status quo 601

Digitized by Google

Page
Restraint of trade..... 90
Right of privacy declared..... 537
Sale by commercial traveler—evidence..... 426
Sale by sample—acceptance..... 729
Sales—mortgage by conditional vendee..... 548
Sales—right of buyer to return goods..... 90
Sale—warranty—acceptance—notice..... 12
Seduction—artifices..... 490
Slander—words imputing larceny..... 522
Specific performance—defect of title..... 491
Statute of frauds—sale..... 42
Stockholders' liability—transfer 266
Stockholders, suits by..... 266
Street railroads—contributory negligence.. 503
Street railroads—crossings..... 487

Page
Street railways—persons approaching car not passengers..... 42
Strike—conspiracy—picketing..... 729
Subrogation—paying incumbrance for another—agreement for subrogation..... 555
Suits in forma pauperis..... 650
Sunday law—public policy..... 12
Taxation—notice of tax sale to owner..... 484
Telegrams—delay in delivery..... 487
Trademark—registration..... 89
Trade unions—breach of contract..... 828
Unfair competition 648
Vendor's lien—limitations..... 3
Wills—incorporation of documents by reference..... 70

Ex. J.N.
1/10/06

Digitized by Google

5026 030

Digitized by Google

Digitized by Google

ACME
BOOKBINDING CO., INC.
JUN 1 4 1984
100 [illegible] STREET
CHARLESTOWN, MASS.

Digitized by Google

Digitized by Google

Digitized by Google